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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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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.
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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: February 23, 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

Federal Register
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Tuesday, January 30, 1990

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-203]

United States Standards for Grades of Canned Pineapple

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the current voluntary U.S. Standards for Grades of Canned Pineapple. The final rule was developed by the U.S. Department of Agriculture (USDA) at the request of major segments of the canned pineapple industry. It will improve the standards and reflect current processing techniques and marketing practices by: (1) Eliminating reference to the sub-styles "small tidbits," "large tidbits," and "symmetrical chunks"; (2) including packing media designations of "extra light sirup" and "artificially sweetened"; (3) changing drained weight values to accommodate the extra densities of the new packing media; (4) modifying the procedure for determining the drained weight and acceptance criteria to reflect other U.S. grade standards and the Food and Drug Administration (FDA) drained weight procedure and acceptance criteria; (5) eliminating the recommended count and size designations for slices and half slices styles; (6) replacing dual grade nomenclature with single letter designations; (7) adding the new style "whole"; and (8) providing a uniform format consistent with recent revisions of other U.S. grade standards. This final rule also includes conforming and miscellaneous nonsubstantive changes for clarity.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Todd Dulaney, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0713, South Building, Washington, DC 20090–6456, Telephone (202) 447–6247.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Agencies are required to periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601). The changes reflect current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing them. Modern pineapple processing techniques have brought about changes in the procedures used to determine quality grades of canned pineapple since the current grade standards became effective in March 1957.

The Pineapple Growers Association of Hawaii (PGAH), an association representing the majority of the canned pineapple industry in the United States, has requested the U.S. Department of Agriculture to revise the U.S. Standards for Grades of Canned Pineapple and align the grading procedures with current processing techniques and marketing practices. The current U.S. grade standards for canned pineapple provide for the sub-styles, "small tidbits" and "large tidbits" under the style of "tidbits." Also, under the style of "chunks," reference is made to the sub-style "symmetrical chunks." The Food and Drug Administration (FDA) does not include these sub-styles as part of the Canned Pineapple Standard of Identity (21 CFR 145.180(a)(2d)).

In order to simplify the standards and maintain consistency between the definitions of the USDA grade standards and the FDA pineapple standard, this final rule will eliminate all reference to the terms "large tidbits," "small tidbits," and "symmetrical chunks" under the respective styles in the U.S. grade standards. In addition, the definitions for all styles of canned pineapple in the U.S. grade standards will be changed to reflect the style definitions in the current FDA standard of identity.

The canned pineapple industry has begun using packing media with sirup designations in addition to those described in the current U.S. grade standards. The current FDA canned pineapple standard provides for and defines these additional packing media designations (21 CFR 145.180(a)(3) and 145.181). This final rule will align the U.S. grade standards with the FDA standard by providing for two additional sirup designations. They are described as "extra light sirup," with sirup densities of at least 10 degrees Brix but less than 14 degrees Brix, and "artificially sweetened," which is not defined with sirup density since the packing media contains no additional sucrose. To further clarify the U.S. grade standards, terminology describing existing packing media designations will also be changed to reflect corresponding definitions in the FDA canned pineapple standard (21 CFR 145(a)(3)).

To accommodate the new values for the additional sirup densities, the new U.S. grade standard provides drained weight values for common container sizes for sirup densities less than 14 degrees Brix. In addition, the new drained weight values and present values will be adjusted to the nearest tenth of an ounce to reflect current manufacturing practices and the accuracy of modern weighing equipment used for determining drained weight. This final rule provides a procedure that streamlines drained weight determinations for crushed style canned

pineapple by eliminating the extra steps involved in physically removing the pineapple material from the drain screen and subtracting the predetermined "tare weight" of the pan. The rule will provide for drained weights to be determined in the sieve, with only the dry weight of the sieve to be subtracted. The new method reflects FDA procedures and acceptance criteria for determining drained weights (21 CFR 145.3) and reflects procedures described in other styles of canned pineapple and other U.S. grade standards.

The coring, cutting, and slicing procedures in modern pineapple processing plants enable processors to uniformly size units for the two styles, "slices" and "half slices" with a controlled degree of accuracy. As a result, uniform counts of units for these two styles are placed in containers. This final rule will delete the section, "Recommended Counts and Sizes of Slices and Half Slices," from the U.S. grade standards, as unnecessary.

Consistent with recent or proposed changes to other U.S. grade standards, this final rule also will replace dual grade nomenclature with single letter grade designations. Under the final rule, "U.S. Grade A" or ("U.S. Fancy"), "U.S. Grade B" or ("U.S. Choice") and "U.S. Grade C" or ("U.S. Standard") will simply become "U.S. Grade A," "U.S. Grade B," and "U.S. Grade C." The final rule will also include the new style "whole," a solid cored and peeled whole fruit, cut into a symmetrical cylinder.

The changes will also provide a uniform format consistent with recent revisions of other U.S. grade standards. The new format is designed to provide industry personnel and Agricultural Commodity Graders with simpler and more comprehensive standards. Definitions of terms and easy-to-read tables will replace the textual descriptions in existing grade standards. The changes will be expected to promote better understanding of the grade standards. Other sections will be modified to conform with these changes.

On March 13, 1989, a proposed rule was published in the **Federal Register** (54 FR 10333) to revise the current U.S. grade standards for canned pineapple. The closing date of the comment period for the proposed rule was May 12, 1989. Two comments were received, both supporting the proposal with minor changes. One was submitted by the Pineapple Growers Association of Hawaii (PGAH), a trade association representing all the processors of canned pineapple in the State of Hawaii. PGAH comments include:

1. Concerning § 52.1721: "As defined in § 52.1713(s), the total score for broken slices is multiplied by 100 then divided by 95, dropping any fractions. Therefore the minimum score for Grade C would actually be 73.

"To correct this and be consistent with the scoring of other styles we request the score point range be changed to read:"

Quality factors	Grade	Score point range
Color:		
Good		27-30 [1]
Reasonably good		24-26 [1]
Fairly good	(C)	21-23 [1]
Poor		0-20 [2]
Uniformity of size and shape:		
Not uniform	(C)	13-15 [1]
Poor uniformity	(SSTD)	0-12 [2]
Defects:		
Practically free		18-20 [1]
Reasonably free		15-17 [1]
Fairly free	(C)	13-14 [1]
Excessive	(SSTD)	0-12 [2]
Character:		
Good		27-30 [1]
Reasonably good		23-26 [1]
Fairly good	(C)	20-22 [1]
Poor	(SSTD)	0-19 [2]

2. "Inasmuch as broken slices style cannot be graded above U.S. Grade C, regardless of the total score point for the product, that part of Table V showing score point range other than for Grade 'C' and 'SSTD' should be deleted". The AMS agrees with the comment in connection with the statement that the minimum total score for Grade C would be 73 points. However, the proposed rule inadvertently did not include a total score point range for Grade C. In addition, the total score point ranges for the grades listed in the proposal were not needed or correct in all instances. AMS is of the view that the minimum total score for Grade C of 73 points is appropriate since acceptable quality is limited to Grade C for the broken slices style. However, AMS disagrees with the comment that the score point range should be changed as sugested to be consistent with the scoring of other styles. The score point ranges for broken slices style are consistent with the score point ranges for other canned pineapple styles with comparable factor descriptions. Accordingly, this part of the comment is without merit and no change is made to restructure the score point ranges for broken slices style as suggested by the comment. However, the comment that Table V should be revised to delete score point ranges other than for Grade C or for Substandard has merit and Table V has been revised accordingly.

The second comment received was from the National Food Processors Association (NFPA) a food trade association representing about 600 member companies. NFPA comments:

Concerning § 52.1713(h): "In the proposed 7 CFR 52.1713 Definition of terms, (i) defect, (1) practically free from defects, (ii) slices (54 FR 10335) the USDA has proposed to change the tolerance for 'mashed' units from: not more than 1 unit in containers of more than 25 units or less, or not more than 3 units in containers of more than 25 units to: not more than one unit in containers of more than 25 units.

"The NFPA opposes this proposed change in the tolerance for mashed units and urges the USDA to retain the original tolerance of not more than 3 mashed units in containers of 25 units or more." The proposed change in tolerance for mashed units in containers of more than 25 units from 3 units to one unit was inadvertent error. Therefore, this comment has merit and the current tolerance in these U.S. grade standards is retained.

AMS has reviewed all comments and in order to improve the standards and encourage uniformity and consistency in commercial practices facilitating the trading of canned pineapple, hereby revises the voluntary grade standards for canned pineapple to: (1) eliminate reference to the sub-styles "small tidbits," "large tidbits," and "symmetrical chunks;" (2) include packing media designations of "extra light sirup" and "artificially sweetened"; (3) change drained weight values to accommodate the extra densities of the new packing media; (4) modify the procedure for determining the drained weight and acceptance criteria to reflect other U.S. grade standards and Food and Drug Administration (FDA) drained weight procedure for acceptance criteria; (5) eliminate the recommended count and size designations for slices and half slices styles; (6) replace dual grade nomenclature with single letter designations; (7) add the new style "whole"; (8) provide a uniform format consistent with recent revisions of other U.S. grade standards; (9) change the total score for minimum Grade C in broken slices style from 70 to 73 points; and (10) retain the current tolerance for mashed units in slices style. This final rule also includes conforming and miscellaneous nonsubstantive changes for clarity.

List of Subjects in 7 CFR Part 52

Fruits, Vegetables, Food grades and standards.

For the reasons set forth in the preamble, 7 CFR part 52 is amended as set forth below:

PART 52—[AMENDED]

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

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. The subpart—United States Standard for Grades of Canned Pineapple, is revised as follows:

Subpart—United States Standards for Grade of Canned Pineapple

Sec.

Subpart—United States Standards for Grades of Canned Pineapple

§ 52.1711 Product description.

Canned pineapple is the product represented as defined in the Standards of Identity, Quality, and Fill of Container for Canned Pineapple (21 CFR 145.180 and 145.181) issued under the Federal Food, Drug, and Cosmetic Act.

§ 52.1712 Styles.

(a) *Whole* consists of whole fruit peeled and cored into reasonably symmetrical pineapple cylinders with both ends cut perpendicular to the cylinder axis.

(b) *Slices* consist of uniformly cut circular slices or rings cut across the axis of the peeled, cored pineapple cyclinders.

(c) *Half slices* consist of uniformly cut, approximately semi-circular halves of slices.

(d) *Broken slices* consist of arc-shaped portions which are not required to be uniform in size and/or shape.

(e) *Spears* consist of predominantly 65 mm (2.5 in), or longer, slender sectors cut radially and lengthwise from peeled cored pineapple cylinders.

(f) *Tidbits* consist of predominantly 8 mm (0.31 in) to 13 mm (0.51 in), reasonably uniform wedge-shaped sectors cut from slices or portions thereof.

(g) *Chunks* consist of short, thick units cut from slices and/or from peeled, cored pineapple, are predominantly more than 13 mm (0.51 in) in both thickness and width, and less than 38 mm (1.5 in) in length.

(h) *Cubes* consist of reasonably uniform, cube-shaped units, predominantly 14 mm (0.55 in) or less in the longest edge dimension.

(i) *Crushed* consists of finely cut, finely shredded or grated, or small diced pieces of canned pineapple.

§ 52.1713 Definition of terms.

In these U.S. standards, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

(a) *Acid* means the grams of anhydrous critic acid in 100 mL of the liquid drained from the product 15 days or more after the pineapple is canned, or the blended homogenized slurry of the comminuted entire contents of the container when measured less than 15 days after canning.

(b) *Blemish* means surface areas and spots which contrast strongly in color or texture with the normal pineapple tissue, and are in excess of 2 mm (0.08) in the longest dimension of the exposed surface of the unit. Blemishes include deep fruit eyes, fragments of shell, brown spots, bruised portions and other abnormalities that are possible to detect in good commercial practice before sealing in the containers. In crushed pineapple the term applies to each fragment of crushed pineapple that bears a blemish. *Serious blemish* means that the blemish seriously affects the appearance or edibility of the unit.

(c) *Brix measurement* means the total soluble solids content of the product corresponding to a pure sucrose solution of the same specific gravity. It is measured 15 days or more after canning (natural equalization) or less than 15 days after canning on the blended homogenized slurry of the comminuted entire contents of the container (simulated equalization).

(d) *Broken unit* means that the whole slice is severed from the core hole to the outer circumference.

(e) *Character* refers to the degree of ripeness and maturity, the texture of the fruit, and the degree of freedom from core material.

(1) *Good character* (applies to all styles) means the units are of practically uniform ripeness, are reasonably firm with fruitlets appearing as a compact structure, are reasonably free from porosity and there is not more than 11 g (0.4 oz) of core material contained in one pound of drained fruit. Half slices or broken slices that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably good character* (applies to all styles) means the units are of reasonably uniform ripeness, the fruitlets are reasonably compact in structure, are fairly free from porosity, and there is not more than 31 g (1.1 oz) of core material contained in one pound of drained fruit. Canned pineapple that falls within the classification defined as "reasonably good character" shall not be graded above U.S. Grade B, regardless of the total score for the product. Half slices or broken slices styles that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly good character* (applies only to half slices or broken slices styles) means the units are of fairly uniform ripeness, the fruitlets are fairly compact in structure, the units are fairly free from porosity, and there is not more than 31 g (1.1 oz) of core material contained in one pound of drained fruit. Half slices or broken slices that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(4) *Poor character* means product that fails to meet the requirements of "reasonably good" or "fairly good character" as applicable for the style. Canned pineapple that falls within this classification shall not be graded above Substandard, regardless of the total score for the product.

(f) *Chip* means any unit in cubes style that is less than 8 mm (0.31 in) in the greatest dimension.

(g) *Color* refers to the predominantly varietal characteristic color of properly ripened and properly processed pineapple.

(1) *Good color* (applies to all styles) means that the color of the canned pineapple units or mass is bright and is characteristic of properly ripened and properly processed pineapple of similar varieties; and that there may be slight variations in shades of such characteristic color in the units, within each unit or within the mass, and that white radiating streaks may be present: *Provided*, that such variations do not materially affect the appearance or edibility of the product. Half slices or broken slices styles that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably good color* (applies to all styles) means that the color of the canned pineapple units or mass may be no more than slightly dull but is characteristic of properly ripened and

properly processed pineapple of similar varieties; and that there may be marked variations in shades of such characteristic color in the units, within each unit, or within the mass, and that white radiating streaks may be present: *Provided,* That such variations do not seriously affect the appearance or edibility of the product. Canned pineapple that falls within this classification shall not be graded above U.S. Grade B, regardless of the total score for the product, except half slices or broken slices styles which shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly good color* (applies only to half slices or broken slices styles) means that the color of the canned pineapple units or mass may be dull, but is characteristic of properly ripened and properly processed pineapple of similar varieties; and, that there may be marked variations in shades of such characteristic color in the units, within each unit, or within the mass, and that white radiating streaks may be present which may seriously affect the appearance or edibility of the product. Half slices or broken slices styles of canned pineapple that fall within this classification shall not be graded above U.S. Grade C, regardless of the total score of the product.

(4) *Poor color* (applies to all styles) means product that fails to meet the requirement of "reasonably good color" or "fairly good color," as applicable for the style. Product that falls within this classification shall not be graded above Substandard, regardless of the total score for the product.

(h) *Core material* means the pineapple portion which is identified as definitely hard and characteristic of the center structure of pineapple, normally removed during processing.

(i) *Defect* refers to the degree of freedom, for the applicable style, from trimmed units, blemished units, mashed units and from any other defects, including specks, in crushed style, that cannot be weighed which detract from the appearance or edibility of the product.

(1) *Practically free from defects* (applies to all styles) means that the canned pineapple is practically free from any defects including defects not specifically mentioned. Practically free from defects means, for the respective styles:

(i) *Whole.* Not more than 10 percent, by count, of the fruit units (cylinders) may be slightly trimmed, based on the average of all containers in the sample; not more than 10 percent by count of the fruit units (cylinders) may have an area greater than 7 percent of the total surface area which is mashed; however, a sample having less than 10 containers is permitted to have one slightly trimmed unit and one unit with more than 7 percent of the surface area mashed. Not more than 2 blemishes, including serious blemishes, per fruit unit (cylinder) is permitted.

(ii) *Slices.* Not more than an occasional unit may be insignificantly or slightly trimmed, and no slices may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished, including seriously blemished; or one unit in a container is permitted to be blemished, including seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided,* That in all containers comprising the sample, such blemished units, including seriously blemished units, do not exceed an average of 5 percent of the total number of units. Not more than one unit in containers of less than 25 units, or not more than three units in containers of 25 units or more, may be mashed.

(iii) *Tidbits.* Not more than 5 percent of the drained weight may consist of units that are excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished, including seriously blemished: *Provided,* That not more than 2½ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 150 units, or not more than 2 percent of the units in containers of 150 or more, may be mashed.

(iv) *Chunks.* Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished: *Provided,* That not more than 2½ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 70 units, or not more than 5 percent of the units in containers of 70 units or more, may be mashed.

(v) *Cubes.* Not more than a total of 2 percent of the drained weight may be blemished and seriously blemished: *Provided,* That not more than 1 percent of the drained weight may be seriously blemished.

(vi) *Spears.* Not more than a reasonable amount of units may be insignificantly or slightly trimmed, but none may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished, or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided,* That in all containers comprising the sample, such blemished units and seriously blemished units do not exceed an average of 5 percent of the total number of units. Not more than one unit per container may be mashed.

(vii) *Crushed.* Not more than ½ percent of the drained weight may consist of fragments bearing blemishes, including seriously blemished fragments. Defects also include dark specks that cannot be weighed, yet affect the appearance or edibility of the product

(viii) *Half slices.* Not more than a reasonable amount of units may be insignificantly or slightly trimmed, but none may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished, including seriously blemished, or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 5 percent, by count: *Provided,* That in all containers comprising the sample, such blemished and seriously blemished units do not exceed an average of 5 percent of the total number of units. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed. Product that falls into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(ix) *Broken slices.* Not more than 5 percent, by count, of the units may be excessively trimmed. Not more than a total of 5 percent, by count, of the units may be blemished and seriously blemished. Not more than 5 percent of the units, by count, of the units may be mashed. Product that falls into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(2) *Reasonably free from defects* (applies to all styles) means that the canned pineapple is reasonably free from any defects, including defects not specifically mentioned. Except for half slices and broken slices styles, product that falls into this classification, shall not be graded above U.S. Grade B, regardless of the total score for the product. Reasonably free from defects means, for the respective styles:

(i) *Whole.* Not more than 10 percent, by count, of the fruit units (cylinders) may be excessively trimmed, based on the average of all containers in the sample; not more than 10 percent, by count, of the fruit units (cylinders) may have an area greater than 10 percent of the total surface area which is mashed; however, a sample having less than 10 containers is permitted to have one excessively trimmed unit and one unit with more than 10 percent of the surface area mashed. Not more than 3 blemishes

and serious blemishes per fruit unit (cylinder) is permitted.

(ii) *Slices.* Not more than a total of 20 percent, by count, of the units may be slightly and excessively trimmed: *Provided,* That not more than 7½ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more than 10 units, but not more than 27 units, two units may be excessively trimmed. Not more than a total of 12½ percent, by count, of the units may be blemished and seriously blemished; but in any container having not more than 5 units, one unit may be blemished or seriously blemished; in containers having more than 5 units, but not more than 10 units, two units may be blemished or seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed.

(iii) *Tidbits.* Not more than 15 percent of the drained weight may consist of units that are excessively trimmed. Not more than a total of 12½ percent, by count, of the units may be blemished and seriously blemished: *Provided,* That not more than 6¼ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 150 units, or not more than 2 percent of the units in containers of 150 units or more, may be mashed.

(iv) *Chunks.* Not more than a total of 12½ percent, by count, may be blemished and seriously blemished: *Provided,* That not more than 6¼ percent, by count, may be seriously blemished. Not more than 3 of the units in containers of less than 70 units, or not more than 5 percent of the units or more, may be mashed.

(v) *Cubes.* Not more than a total of 12½ percent, by count, of the units may be blemished and seriously blemished; *Provided,* that not more than 6¼ percent, by count, may be seriously blemished.

(vi) *Spears.* Not more than a total of 20 percent, by count, of the units may be insignificantly, slightly, and excessively trimmed: *Provided,* That not more than 15 percent, by count, of the units may be excessively trimmed. Not more than 12½ percent, by count, of the units may be blemished and seriously blemished; but in any container having not more than 5 units, one unit may be blemished or seriously blemished; in containers having more than 5 units, but not more than 10 units, two units may be blemished and seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit per container may be mashed.

(vii) *Crushed.* Not more than 1¼ percent of the drained weight may consist of blemished and seriously blemished fragments.

(viii) *Half slices.* Not more than a total of 20 percent, by count, of the units may be slightly and excessively trimmed: *Provided,* That not more than 7½ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more than 10 units but not more than 27 units, two units may be excessively trimmed. Not more than a total of 8 percent, by count, of the units may be blemished and seriously blemished; or one unit in a container is permitted to be blemished or seriously blemished if such unit exceeds the allowance of 8 percent, by count: *Provided,* That in all containers comprising the sample such blemished and seriously blemished units do not exceed an average of 8 percent of the total number of units. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed. Product that falls within this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(ix) *Broken slices.* Not more than 10 percent, by count, of the units may be excessively trimmed. Not more than 8 percent, by count, of the units may be blemished or seriously blemished. Not more than 5 percent, by count, of the units may be mashed. Product that falls into the classification, shall not be graded above U.S. Grade C, regardless of the total score for the product.

(3) *Fairly free from defects* (applies only to half slices or broken slices styles) means that the canned pineapple is "fairly free from defects," including detects not specifically mentioned. Half slices or broken slices styles that fall into this classification, shall not be graded above U.S. Grade C, regardless of the total score for the product, and, in addition, has the following meanings with respect to the following styles of canned pineapple:

(i) *Half slices.* Not more than 7½ percent, by count, of the units may be excessively trimmed; but in any container having not more than 10 units, one unit may be excessively trimmed; and in any container having more than 10 units, but not more than 27 units, two units may be excessively trimmed. Not more than 12½ percent, by count, of the units may be blemished and seriously blemished, but in any container having not more than 5 units, one unit may be blemished or seriously blemished; in containers having more than 5 units, but not more than 10 units, two units may be blemished and seriously blemished; and in containers having more than 10 units, but not more than 32 units, four units may be blemished and seriously blemished. Not more than one unit in containers of 25 units or less, and not more than 3 units in containers of more than 25 units, may be mashed.

(ii) *Broken slices.* Not more than 15 percent, by count, of the units may be excessively trimmed. Not more than 12½ percent, by count, of the units may be blemished and seriously blemished; but in any container having more than 10 units, but not more than 32 units, four units may blemished and seriously blemished. Not more than 5 percent, by count, of the units may be mashed.

(4) *Excessive defects* means canned pineapple which fails to meet either "reasonably free from defects" or "fairly free from defects," as applicable for the style. Product that falls into this classification shall not be graded above Substandard, regardless of the total score for the product.

(j) *Eye* means the blossom cup of the pineapple that is normally removed during processing (see blemish).

(k) *Extraneous vegetable material* (EVM) means any objectional vegetable material regardless of size, from other than the pineapple fruit, which is harmless.

(l) *Flavor and odor*—(1) *Good flavor and odor* means that the flavor and odor is normal for canned pineapple and is free objectionable flavors and odors of any kind.

(2) *Fairly good flavor and odor* means that the flavor and odor may be lacking in good flavor and odor, but is free from objectionable flavors and odors of any kind.

(m) *Mashed* (in styles other than cube or crushed) means a unit that has lost its normal shape as evidenced by marks of mechanical injury. A unit that has lost its normal shape because of ripeness and which bears no mark of mechanical injury shall not be considered as "mashed."

(n) *Porosity* means the degree of freedom from air spaces in the pineapple unit that gives a spongy texture.

(o) *Sample unit size* means the amount of product specified to be used for grading.

(p) *Shell* means all the outer layer of the fruit that is normally removed during processing (see blemish).

(q) *Tartness* means the taste sensation that is biting, sharp, and sour which is characteristic of the pineapple fruit.

(1) *Excessively tart* means that more than 1.35 g of acid is present in 100 mL of the drained liquid.

(2) *Not excessivelyt tart* means that not more than 1.35 g of acid is present in 100 mL of the drained liquid.

(r) *Trim* means the degree of impairment of the pineapple units from the paring, coring, cutting or trimming process.

(1) *Insignificantly trimmed* means any trimming that is noticeable but of lesser degree than slightly trimmed.

(2) *Slightly trimmed* (applies only to whole, slices, or half slices styles) means that the portion trimmed away approximates 3 percent to not more than 5 percent of the apparent physical bulk of the perfectly formed unit and if such trimming materially affects the normal circular shape of the outer or edge of the unit.

(3) *Excessively trimmed* in whole, slices, or half slices styles means that the portion trimmed away exceeds 5 percent of the apparent physical bulk of the perfectly formed unit and if such trimming destroys the normal circular shape of the outer or inner edge of the unit. In broken slices, spears, or tidbits means that the normal shape of the unit is destroyed by trimming.

(s) *Uniformity of size and shape* is not scored for crushed style. The other three factors (colar, defects, and character) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions to determine the total score for crushed style canned pineapple. For broken slices style, this quality factor may be scored not higher than 15 points. The four factors (color, uniformity of size and shape, defects, and character) are scored and the total is multiplied by 100 and divided by 95, dropping any fractions to determine the total score for broked slices.

(1) *Radial axis* in whole, slices, or half slices styles, means the measurement along the radius from the inside arc to the outside arc.

(2) *Length*—(i) In tidbits and chunks styles, means the measurement along the radius from the inside arc to the outside arc.

(ii) In spears style, means the longitudinal measurement of the spear.

(3) *No. 8 sieve* means the meshes of a sieve designated in the American Society for Testing and Materials (ASTM) Standard E–11, Standards for Specifications for Wire Cloth Sieves for Testing Purposes.

(4) *Practically uniform in size and shape* means for the following styles:

(i) *Whole.* The maximum radial axis of the cylinder does not exceed the minimum radial axis of the cylinder by more than 6 mm (0.25 in). The cylinder may be cracked but not broken into separate pieces.

(ii) *Slices.* The diameter of the largest slice does not exceed the diameter of the smallest slice by more than 2 mm (0.08 in). The thickest slice does not exceed the thinnest slice by more than 2 mm (0.08 in) in thickness. The maximum radial axis of any slice does not exceed the minimum radial axis of the same slice by more than 3 mm (0.12 in). The drained weight of the largest slice is not more than 1.4 times the drained weight of the smallest slice.

(iii) *Tidbits.* Not more than 7½ percent of the drained weight may consist of units each of which weighs less than three-fourths as much as the average weight of all the untrimmed tidbits.

(iv) *Chunks.* None of the units may have a longest dimension (along any edge) greater than 38 mm (1.5 in). Not more than 10 percent of the drained weight consists of pieces weighing less than 5 g (0.18 oz) each.

(v) *Cubes.* Not more than an aggregate of 10 percent of the drained weight may consist of units of such size that they pass through the meshes of a sieve with 5/16 in) square openings, and pieces weighing more than 3 g (0.11 oz) each.

(vi) *Spears.* The units are of substantially equal length. Not more than 10 percent, by count, of the units or not more than one unit in a container of less than 10 units, may be less than 19 mm (0.75 in) or more than 45 mm (1.75 in) in the longest edge dimension other than the longitudinal measurement of the spear. The drained weight of the largest spear is not more than 1.4 times the weight of the smallest spear.

(vii) *Half slices.* The diameter of the largest half slice does not exceed the diameter of the smallest half slice by more than 2 mm (0.08 in). The thickest half slice does not exceed the thinnest half slice by more than 2 mm (0.08 in.). The drained weight of the largest half slice is not more than 1.75 times the drained weight of the smallest half slice (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through).

(5) *Reasonably uniform in size and shape* (applies to all styles except broken and crushed styles). Except for half slices style, the applicable styles of canned pineapple that fall into this classification, shall not be graded above U.S. Grade B, regardless of the total score for the product. Reasonably uniform in size and shape has the following meanings with respect to style:

(i) *Whole.* The maximum radial axis of the cylinder does not exceed the minimum radial axis of the cylinder by more than 10 mm (0.39 in). The cylinder may be cracked but not broken into separate pieces.

(ii) *Slices.* The diameter of the largest slice does not exceed the diameter of the smallest slice by more than 3 mm (0.12 in). The thickest slice does not exceed the thinnest slice by more than 3 mm (0.12 in) in thickness. The maximum radial axis of any slice does not exceed the minimum radial axis of the same slice by more than 6 mm (0.25 in). The drained weight of the largest slice is not more than 1.4 times the drained weight of the smallest slice.

(iii) *Tidbits.* Not more than 15 percent of the drained weight may consist of units each of which weighs less than three-fourths as much as the average weight of all the untrimmed tidbits.

(iv) *Chunks.* None of the units may have a longest dimension (along any edge) greater than 38 mm (1.5 in). Not more than 15 percent of the drained weight consists of pieces weighing less than 5 g (0.18 oz) each.

(v) *Cubes.* Not more than 10 percent of the drained weight may consist of units of such size that they pass through the meshes of a sieve with 8 mm (0.31 in) square openings. Not more than 15 percent of the drained weight may consist of pieces weighing more than 3 g (0.11 oz) each.

(vi) *Spears.* The units are of reasonably uniform length. Not more than 20 percent, by count, of the units or not more than one unit in a container of less than 5 units, may be less than 19 mm (0.75 in) or more than 45 mm (1.75 in) in the longest edge dimension other than the longitudinal measurement of the spear. The drained weight of the largest spear is not more than 1.4 times the weight of the smallest spear.

(vii) *Half slices.* The diameter of the largest half slice does not exceed the diameter of the smallest half slice by more than 3 mm (0.12 in). The thickest half slice does not exceed the thinnest half slice by more than 3 mm (0.12 in.) in thickness. The drained weight of the largest half slice is not more than 1.75 times the drained weight of the smallest half slice (except for an occasional broken piece due to splitting or occasional whole slice not quite completely cut through). Product that falls within this classification shall not be graded above U.S. Grade C, regardless of the total score for the product.

(6) *Fairly uniform in size and shape* (applies only to the style of half slices) means that the units fail to meet the requirements of "reasonably uniform in size and shape" and shall not be graded above U.S. Grade C, regardless of the total score for the product. The drained weight of the largest half slice is not more than 1.75 times the weight of the smallest half slice (except for an occasional broken piece due to splitting or an occasional whole slice not quite completely cut through).

(7) *Not uniform in size and shape* (applies only to broken slices style) means:

(i) Not more than 10 percent of the drained weight may consist of pieces having an arc of less than 90 degrees.

(ii) Not more than 5 percent of the drained weight may consist of pieces that measure in thickness less than 8 mm (0.31 in) or more than 25 mm (1 in); or pieces that measure less than 19 mm (0.75 in) in width as measured from the outer edge to the inner edge; and

(iii) Not more than 5 percent of the drained weight may consist of broken slices having an outside diameter differing by as much as 10 mm (0.39 in) from those present in the greatest proportion by weight.

(8) *Poor uniformity of size and shape* (applies to all styles except crushed style) means canned pineapple which fails to meet in some respect: "reasonably uniform in size and shape," "fairly uniform in size and shape, or "not uniform in size and shape," as applicable for the style. Product that falls into this classification shall not be graded above Substandard, regardless of the total score for the product.

(t) *Unit* means one whole cylinder, slice, half slice, broken slice, spear, tidbit, chunk, cube or a specified weight of crushed pineapple.

§ 52.1714 Recommended sample unit sizes.

The requirements for all factors of quality and analysis are based on the following:

(a) The entire contents of a container;

(b) A representative portion of the contents of a container;

(c) A combination of the contents of two or more containers of the same item; or

(d) A representative portion of processed product stored or held in bulk containers.

§ 52.1715 Brix measurements.

Cut-out requirements for liquid packing media in canned pineapple are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The "cut-out" Brix measurements, as applicable to the respective designations, are as follows:

TABLE I.—PACKING MEDIA DESIGNATIONS

Designations	Brix measurement
"Extra heavy sirup"; "extra heavily sweetened pineapple juice and water"; or "extra heavily sweetened pineapple juice".	22° or more, but not more than 35°
"Heavy sirup"; "heavily sweetened pineapple juice and water"; or "heavily sweetened pineapple juice".	18° or more, but not more than 22°
"Light sirup"; "lightly sweetened pineapple juice and water"; or "lightly sweetened pineapple juice".	14° or more, but not more than 18°
"Slightly sweetened water"; "extra light sirup"; "slightly sweetened pineapple juice and water"; or "slightly sweetened pineapple juice".	10° or more, but less than 14°
"In water" (except crushed style)	Not applicable
"In pineapple juice"	Not applicable
"In pineapple juice and water"	Not applicable
"In clarified pineapple juice"	Not applicable
"Artificially sweetened"	Not applicable

§ 52.1716 Fill of container for crushed style canned pineapple.

(a) The standard of fill of container for canned crushed pineapple is a fill of not less than 90 percent of the total water capacity of the container. Crushed style canned pineapple that does not meet this requirement is "Below Standard in Fill."

(b) The recommended fill of container for canned pineapple, other than crushed style canned pineapple, is not incorporated in the grades of the finished product since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of canned pineapple of all styles except crushed style canned pineapple be as full as practicable without impairment of quality and that the product and packing medium occupy not less than 90 percent of the volume of the container.

§ 52.1717 Minimum drained weights for canned crushed pineapple.

(a) *General.* The minimum drained weights for crushed style canned pineapple are not incorporated in the grades of the finished product since drained weight is not a factor of quality for the purpose of these grades; however, minimum drained weights for crushed style canned pineapple other than "heavy pack" or "solid pack" are standards of quality, and minimum drained weights for crushed style "heavy pack" and "solid pack" canned pineapple ate standards of identity under the Federal Food, Drug, and Cosmetic Act. Crushed style canned pineapple, other than "heavy pack" or "solid pack", which is less than 63 percent of the net weight of the contents of the container is:

(1) Below standard in quality, good food—not high grade; or

(2) Below standard in quality, contains excess liquid.

(b) The minimum drained weights for crushed canned pineapple are shown in Table II of this section.

TABLE II—MINIMUM DRAINED WEIGHTS FOR CRUSHED STYLE CANNED PINEAPPLE

Container	Other than "heavy pack" or "solid pack" crushed.	"Heavy pack" crushed.	"Solid pack" crushed.
Any Container Size	Drained fruit: not less than 63 percent, by weight, of net contents.	Drained fruit: not less than 73 percent but less than 78 percent, by weight, of net contents.	Drained fruit: not less than 78 percent of net contents.

§ 52.1718 Recommended minimum drained weights for canned pineapple (other than crushed style canned pineapple).

(a) There are no recommended drained weight minimums for whole style canned pineapple since fill for this style is based on volume.

(b) *General.* The recommended minimum drained weights for canned pineapple in styles other than crushed and whole are based on equalization of the product 15 days or more after the product has been canned. The recommended minimum drained weights for canned pineapple in styles other than crushed and whole are not incorporated in the grades of the

finished product, since drained weight is not a factor of quality for the purposes of these grades.

(c) *Method for ascertaining drained weight in canned pineapple (including canned crushed pineapple).* The drained weight is determined by emptying the contents of a container upon a United States Standard No. 8 circular sieve of proper diameter so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for two minutes. The drained weight is the weight of the sieve and pineapple less the weight of the dry sieve. A sieve 8 inches in diameter is used for the equivalence of No. 3 size cans (404 X 414) and smaller, and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can.

(d) Recommended minimum drained weights of canned pineapple in styles other than crushed or whole style are shown in Table III of this section.

TABLE III.—RECOMMENDED MINIMUM DRAINED WEIGHTS FOR STYLES OF CANNED PINEAPPLE

[Other Than Crushed or Whole Style]

Container designation	Container dimension	Style	With sirup density 14° Brix or more	With sirup density less than 14° Brix
	(inches)		*(ounces)*	*(ounces)*
No. 1 Flat	307 x 203	All styles	4.9	4.7
8 oz Tall	211 x 304	All styles	5.0	4.8
211 Cyl.	211 x 414	All styles	7.7	7.4
No. 1¼	401 x 207.5	All styles	8.7	8.2
No. 1½	307 x 309	All styles	9.4	8.9
No. 2	307 x 409	All styles	12.3	11.7
No. 2½	401 x 411	All styles	17.8	17.0
No. 10	603 x 700	Chunks, Tidbits	65.7	63.6
No. 10	603 x 700	Slices	61.5	59.5
No. 10	603 x 700	Half slices and broken slices	62.5	60.5
No. 10	603 x 700	Cubes	67.4	64.1

(e) Conformance with the recommended minimum drained weights for canned pineapple other than crushed or whole style is determined by averaging the drained weights from all the containers which are representative of a specific lot and such lot is considered as meeting the minimum drain weight recommendations if the following criteria are met:

(1) The average of the drained weights from all of the containers in the sample meets the recommended drained weight;

(2) One-half or more of the containers meet the recommended drained weight; and

(3) The drained weights from the containers which do not meet the recommended minimum drained weights are within the range of variability for good commercial practice.

§ 52.1719 Grades.

(a) U.S. Grade A is the quality of canned pineapple that meets the applicable requirements of tables IV and VII of § 52.1721.

(b) U.S. Grade B is the quality of canned pineapple that meets the applicable requirements of tables IV and VII of § 52.1721.

(c) U.S. Grade C is the quality of canned pineapple that meets the applicable requirements of tables IV and VII of § 52.1721.

(d) Substandard is the quality of canned pineapple that fails to meet the requirements for "U.S. Grade B" or "U.S. Grade C," as applicable for the style.

§ 52.1720 Factors of quality and analysis.

(a) The grade of a lot of canned pineapple is based on evaluation and analysis of the product for the following scoreable quality, and non-scoreable quality and analytical factors:

(1) Color;

(2) Uniformity of size and shape (except crushed style);

(3) Defects;

(4) Character;

(5) Flavor and odor; and

(6) Tartness.

(b) The relative importance of each scoreable quality factor is expressed numerically on the scale of 0 to 100. The maximum number of points that may be given each factor is:

Quality factors	Points
Color	30
Uniformity of size and shape	20
Defects	20
Character	30
Total score	100

(c) The essential variations within each scoreable quality factor are so described that the value may be determined for each factor and expressed numerically. The numerical range for the rating of each factor is inclusive (for example, 24 to 26 points means 24, 25, or 26 points) and the score points shall be prorated relative to the degree of excellence for each scoreable quality factor.

§ 52.1721 Requirements for grades.

TABLE IV.—CANNED PINEAPPLE—WHOLE, SLICES, SPEARS, TIDBITS, CHUNKS, CUBES

Quality factors and Description	Grade	Score point range
Color:		
Good	(A)	27–30
Reasonably Good	(B)	24–26 [1]
Poor	(SSTD)	0–23 [2]
Uniformity of size and shape:		
Practically uniform	(A)	18–20
Reasonably uniform	(B)	16–17 [1]
Poor Uniformity	(SSTD)	0–15 [2]
Defects:		
Practically Free	(A)	18–20
Reasonably Free	(B) – 17D [1]	
Excessive	(SSTD)	0–15 [2]
Character:		
Good	(A)	27–30
Reasonably Good	(B)	24–26 [1]
Poor	(SSTD)	0–23 [2]
Total Score (range).	(A)	90–100 points
	(B)	80–89 points
	(SSTD)	0–79 points
Flavor and Odor	(A)	Good
	(B)	Fairly good
	(SSTD)	Off Flavor
Tartness	(A)	Not excessively tart
	(B)	
	(SSTD)	Excessively tart

[1] Cannot be graded above U.S. Grade B, regardless of the total score for the product.

[2] Cannot be graded above Substandard, regardless of the total score for the product.

TABLE V.—CANNED PINEAPPLE—BROKEN SLICES

Quality factors and Description	Grade	Score point range
Color:		
Good		27–30 [1]
Reasonably Good	(C)	24–26 [1]
Fairly Good		21–23 [1]
Poor	(SSTD)	0–20 [2]
Uniformity of size and shape:		
Not Uniform	(C)	14–15 [1]
Poor Uniformity	(SSTD)	0–13 [2]
Defects:		
Practically Free		18–20 [1]
Reasonably Free	(C)	16–17 [1]
Fairly Free		14–15 [1]
Excessive	(SSTD)	0–13 [2]
Character:		
Good		27–30 [1]
Reasonably Good	(C)	24–26 [1]
Fairly Good		21–23 [1]
Poor	(SSTD)	0–20 [2]
Total Score (range) [3].	(C)	73–100 points
	(SSTD)	0–72 points
Flavor and Odor	(C)	Good fairly good
	(SSTD)	Off flavor
Tartness	(C)	Not excessively tart
	(SSTD)	Excessively tart

[1] Cannot be graded above U.S. Grade C, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.
[3] To determine the total score, the four factors (Color, Uniformity, Defects, and Character) are scored and the total is multiplied by 100 and divided by 95, dropping any fractions.

TABLE VI.—CANNED PINEAPPLE—HALF SLICES

Quality factors and Description	Grade	Score point range
Color:		
Good		27–30 [1]
Reasonably Good	(C)	24–26 [1]
Fairly Good		21–23 [1]
Poor	(SSTD)	0–20 [2]
Uniformity of size and shape:		
Practically uniform		18–20 [1]
Reasonably uniform	(C)	16–17 [1]
Fairly Uniform		14–15 [1]
Poor Uniformity	(SSTD)	0–20 [2]
Defects:		
Practically Free		18–20 [1]
Reasonably Free	(C)	16–17 [1]
Fairly Free		14–15 [1]
Excessive	(SSTD)	0–13 [2]
Character:		
Good		27–30 [1]
Reasonably Good	(C)	24–26 [1]
Fairly Good		21–23 [1]
Poor	(SSTD)	0–20 [2]
Total score (range)	(C)	70–100 points
	(SSTD)	0–69 points
Flavor and odor	(C)	Good or fairly good
	(SSTD)	Off Flavor
Tartness	(C)	Not excessively tart

TABLE VI.—CANNED PINEAPPLE—HALF SLICES—Continued

Quality factors and Description	Grade	Score point range
	(SSTD)	Excessively tart

[1] Cannot be graded above U.S. Grade C, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.

TABLE VII.—CANNED PINEAPPLE—CRUSHED

Quality factors and Description	Grade	Score point range
Color:		
Good	(A)	27–30
Reasonably good	(B)	24–26 [1]
Poor	(SSTD)	0–23 [2]
Defects:		
Practically free	(A)	18–20
Reasonably free	(B)	16–17 [1]
Excessive	(SSTD)	0–15 [2]
Character:		
Good	(A)	27–30
Reasonably good	(B)	24–26 [1]
Poor	(SSTD)	0–23 [2]
Total Score (Range) [3].	(A)	90–100 points
	(B)	80–89 points
	(SSTD)	0–79 points
Flavor and odor	(A)	Good
	(B)	Fairly Good
	(SSTD)	Off Flavor
Tartness	(A)	Not excessively tart
	(B)	
	(SSTD)	Excessively tart

[1] Cannot be graded above U.S. Grade B, regardless of the total score for the product.
[2] Cannot be graded above Substandard, regardless of the total score for the product.
[3] To determine the total score, the other three factors (Color, Defects, and Character) are scored and the total is multiplied by 100 and divided by 80, dropping any fractions.

§ 52.1722 Sample size.

The sample size used to determine whether canned pineapple meets the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed products Thereof, and Certain Other Processed Food Products" (7 CFR 52.1 through 52.83).

§ 52.1723 Lot quality and analytical requirements.

A lot of canned pineapple is considered as meeting the quality and analytical requirements if:

(a) The requirements specified in tables IV through VII, as applicable, are met; and

(b) The sampling plans and procedures in 7 CFR 52.1 through 52.83 are met.

Dated: January 24, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90–1923 Filed 1–29–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89–227]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the quarantined area in Los Angeles County, and the quarantined area comprised of a portion of Orange County and Los Angeles County, California. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective January 25, 1990. Consideration will be given only to comments received on or before April 2, 1990.

ADDRESSES: To help ensure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–227. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

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

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The

Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document effective August 23, 1989, and published in the **Federal Register** on August 29, 1989 (54 FR 35629–35635, Docket Number 89–146), established the Mediterranean fruit fly regulations and quarantined an area in Los Angeles County, California (7 CFR 301.78 *et seq.*; referred to below as the regulations). In an interim rule effective September 14, 1989, and published in the **Federal Register** on September 20, 1989 (54 FR 38643–38645, Docket Number 89–169), we amended the regulations by adding a portion of Santa Clara County, California, to the list of quarantined areas. Also, in an interim rule effective October 11, 1989, and published in the **Federal Register** on October 17, 1989 (54 FR 42478–42480, Docket Number 89–182), we amended the regulations by adding an additional portion of Los Angeles County and a portion of San Bernardino County in California to the list of quarantined areas. In addition, we further amended the regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas in an interim rule effective November 17, 1989, and published in the **Federal Register** on November 24, 1989 (54 FR 48571–48572, Docket Number 89–202). We amended the regulations again by revising the quarantined area in Los Angeles County, California, to expand a previously quarantined area and designate an additional quarantined area in an interim rule effective December 6, 1989, and published in the **Federal Register** on December 13, 1989 (54 FR 51189–51191, Docket Number 89–206). In an interim rule effective January 9, 1990 (55 FR 712–715, Docket Number 89–212), we amended the regulations by adding an area comprised of a portion of Orange County and an additional portion of Los Angeles County, California. These areas remain infested with Mediterranean fruit fly

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

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, a unit within the U.S. Department of Agriculture, reveal that infestations of Medfly have been discovered in Los Angeles County in the areas of Sylmar, North Hollywood, Inglewood, Hawthorne, Gardena, Glendora, Lynwood, and Bell, California.

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

In accordance with these criteria, we are expanding the quarantined area in Los Angeles County, and the area comprised of a portion of Orange and Los Angeles Counties, California. Descriptions of the quarantined areas in these two counties, incorporating these additions, are set forth in full in the rule portion of this document.

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

Emergency Action

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

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

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

This regulation affects the interstate movement of regulated articles from portions of Los Angeles and Orange Counties, California. Within the regulated area approximately 706 entities will be affected by this rule. All would be considered small entities. They include 557 fruit/produce vendors, 67 nurseries, 18 fruit vendors, 38 homeowner properties with less than 15 acres of citrus and avocados, 4 properties with 5 acres of abandoned and residual citrus grove, 2 community gardens, 1 landfill and 19 flea markets. These entities comprise less than 1 percent of the total of similar enterprises operating in the State of California. Most of the sales for these entities are local intrastate and would not be affected by this regulation. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

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

Paperwork Reduction Act

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR Part 3015, subpart V).

List of Subjects in 7 CFR Part 301

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

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

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

3. In § 301.78–3 paragraph (c), the designations of the quarantined areas for Los Angeles and Los Angeles and Orange Counties, California are revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

That portion of the county in the Sylmar and North Hollywood area bounded by a line drawn as follows: Beginning at the intersection of Balboa Boulevard and Foothill Boulevard; then easterly and southerly along Foothill Boulevard to its intersection with Maclay Avenue; then northeasterly along this avenue to its intersection with Interstate Highway 210; then southeasterly along this highway to its intersection with Sunland Boulevard; then southwesterly along this boulevard to its intersection with Glenoaks Boulevard; then southeasterly along this boulevard to its intersection with Buena Vista Street; then southerly and southeasterly along this street to its intersection with Olive Avenue; then southwesterly along this avenue to its intersection with State Highway 134; then westerly along this highway to its intersection with U.S. Highway 101; then westerly along this highway to its intersection with Interstate Highway 405; then northerly along this highway to its intersection with Victory Boulevard; then westerly along this boulevard to its intersection with Balboa Boulevard; then northerly along this boulevard to the point of beginning.

Los Angeles and Orange County

That portion of the counties in the Brea, Whittier, Baldwin Park, Valinda and San Gabriel Valley areas bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 10 and Grand Avenue; then southerly along this avenue to its intersection with Valley Boulevard; then southwesterly along this boulevard to its intersection with Brea Canyon Road; then southerly along this road to its intersection with State Highway 60; then westerly along this highway to its intersection with Nogales Street; then southerly along this street to its intersection with Colima Road; then westerly along this road to its intersection with Fullerton Road; then southerly along this road to its intersection with the La Habra Heights City limits; then southeasterly from this intersection along an imaginary line to the intersection of the Los Angeles-Orange County line and State Highway 57; then southerly along this highway to its intersection with Bastanchury Road; then westerly along this road to its intersection with Euclid Street; then northerly along this street to its intersection with Rosecrans Avenue; then westerly along this avenue to its intersection with Santa Gertrudes Avenue; then northerly along this avenue to its intersection with Imperial Highway; then westerly along this highway to its intersection with Telegraph Road; then northwesterly along this road to its intersection with Leffingwell Road; then southwesterly along this road to its intersection with Carmenita Road; then southerly along this road to its intersection with Artesia Boulevard; then westerly along this boulevard to its intersection with State Highway 91; then westerly along this highway to its intersection with Wilmington Avenue; then southerly along this avenue to its intersection with University Drive; then westerly along this drive to its intersection with Avalon Boulevard; then southerly along this boulevard to its intersection with 192nd Street; then westerly along this street to its intersection with Main Street; then southwesterly along Main Street to its intersection with Interstate Highway 405; then northwesterly along this highway to its intersection with Prairie Avenue; then northerly along this avenue to its intersection with Florence Avenue; then easterly along this avenue to its intersection with Vermont Avenue; then northerly along this avenue to its intersection with Slauson Avenue; then easterly along this avenue to its intersection with Central Avenue; then northerly along this avenue to its intersection with 41st Street; then easterly along this street to its intersection with 38th Street; then easterly along this street to its intersection with 37th Street; then easterly along this street to its intersection with Soto Street; then northeasterly along this street to its intersection with Whittier Boulevard; then westerly along this boulevard to its intersection with 6th Street; then northwesterly along this street to its intersection with Broadway; then southwesterly along Broadway to its intersection with Interstate Highway 10; then westerly along this highway to its intersection with Western Avenue; then north along this avenue to its intersection with Venice Boulevard; then westerly along this boulevard to its intersection with Crenshaw Boulevard; then northeasterly along this boulevard to its intersection with Olympic Boulevard; then westerly along this boulevard to its intersection with Highland Avenue; then northerly along this avenue to its intersection with U.S. Highway 101; then northwesterly along this highway to its intersection with Barham Boulevard; then northerly along this boulevard to its intersection with Forest Lawn Drive; then northeasterly along this drive to its intersection with State Highway 134; then easterly along this highway to its intersection with Interstate Highway 5; then southerly along this highway to its intersection with Colorado Boulevard; then easterly along this boulevard to its intersection with State Highway 2; then northerly along this highway to its intersection with Chevy Chase Drive; then northeasterly along this drive to its intersection with Highland Drive; then easterly along this drive to its intersection with Woodbury Road; then easterly along this road to its intersection with Lake Avenue; then northerly along this avenue to its intersection with New York Drive; then easterly and southeasterly along this drive to its intersection with Sierra Madre Villa Avenue; then southerly along this avenue to its intersection with Sierra Madre Boulevard; then easterly along this boulevard to its intersection with the Sierra Madra City limits; then northerly and easterly along the city limits to its intersection with the Arcadia City limits; then easterly along the Arcadia City limits to its intersection with the Monrovia City limits; then northerly and easterly along the Monrovia City limits to its intersection with the Duarte City limits; then easterly and southerly along the Duarte City limits to its intersection with the Azusa City limits; then easterly and southerly along the Azusa City limits to its intersection with the Glendora City limits; then northerly and easterly along the Glendora City limits to its intersection with the San Dimas City limits; then easterly and southerly along the San Dimas City limits to its intersection with the Angeles National Forest boundary; then easterly along this boundary to its intersection with the La Verne City limits; then northerly, easterly, and southerly along the city limits to its intersection with State Highway 30; then easterly along this highway to its intersection with Towne Avenue; then southerly along this avenue to its intersection with Interstate Highway 10; then westerly along this interstate to the point of beginning.

* * * * *

Done in Washington, DC, this 25th day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–2077 Filed 1–29–90; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AD52

Fingerprint Cards; Increase in Fee

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect an administrative change pertaining to an increase in the fee that is charged for processing nuclear power plant fingerprint cards which are associated with granting unescorted access to an operating reactor site, or access to Safeguards Information. This amendment is necessary to reflect a fee schedule change imposed by the FBI.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: R.B. Manili, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–0940.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1989, the FBI's Identification Division notified the Nuclear Regulatory Commission that there would be an increase of six dollars in the user-fee charge for fingerprint cards submitted by the NRC effective March 1, 1990. The increase from $14 to $20 in the user fee charged NRC by the FBI was necessitated by the costs of operating the FBI's central fingerprint repository; despite recent major automation enhancements, the operation of the repository is still a manpower intensive system. Congress reduced the FY 1990 base funding for salaries and expense of the FBI in anticipation of the collection of the user fees. The amended rule is needed to adjust the fee each licensee pays for the FBI criminal history checks so that the NRC can process and submit the fingerprint cards in conjunction with the effective date of the FBI's rate change. The NRC holdback of one dollar from the fee paid by licensees remains unchanged.

Because this amendment solely deals with a fee schedule change ordered by the FBI, the notice and comment provisions of the Administrative Procedure Act are impracticable and unnecessary. This amendment is effective 30 days after publication in the Federal Register.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in a categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). Existing requirements were approved by the Office of Management and Budget under control number 3150–0002.

Backfit Analysis

The backfit rule, 10 CFR 50.109, does not apply to the action taken in this final rulemaking. Therefore, no backfit analysis has been prepared.

List of Subjects in 10 CFR Part 73

Access authorization, Exports, Hazardous materials transportation, Imports, Incorporation by reference, Nuclear materials, Nuclear power plants and reactors, Penalty, Physical protection, Reporting and recordkeeping requirements, Safeguards information, Security measures, Special nuclear material, Transportation, Violations.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The Authority Citation for part 73 continues to read in part as follows:

Authority: Sections. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844). * * *

§ 73.57 [Amended]

2. In § 73.57(d)(3), the rate of payment in the second sentence which currently reads "$15.00" is revised to read "$21.00".

Dated at Rockville, Maryland this 19th day of January 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90–1918 Filed 1–29–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563d

[No. 89–448]

RIN 1550–AA11

Securities Filings of Savings Associations

Date: December 5, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: Section 563d.1 of the regulations of the Office of Thrift Supervision (the "Office"), 12 CFR 563d.1, currently requires that a savings association file one copy of each report submitted to the Office with the District Office for the district in which the association is located. There are certain exceptions to this requirement. Currently, reports required to be filed by persons or entities that are *not* associations, are filed only with the Corporate and Securities Division ("CASD" or "the Division") of the Office. In addition, Forms 3 and 4, regardless of by whom they are filed, are also filed only with CASD.

By its action today, the Office is hereby amending § 563d.2 of its regulations to require that one copy of all reports filed with the Office under the Securities Exchange Act of 1934, by an association or any other person or entity, also be filed with the appropriate District Office for the association to which the filings pertain. Such concurrent filings will improve the coordination between the Office's Washington staff and the District Offices, eliminate delays in forwarding copies of certian filings from Washington to the Districts, and further improve the quality and timeliness of review of securities filings made with the Office.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Diane Fera Petruso, Program Analyst, Corporate and Securities Division—Legal, (202) 906–7059, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The increase in recent years of savings associations converting from mutual to stock form has resulted in an increased number of institutions subject to the registration and filing requirements of the Securities Exchange Act of 1934 ("1934 Act"). These 1934 Act reports include filings such as an annual reports on Form 10–K, quarterly reports on Form 10–Q, Form 8–K's, Schedules 13–D and

13–G, Forms 3 and 4, and preliminary and definitive proxy statements. Section 563d.1 of the regulations of the Office promulgated pursuant to the 1934 Act directs associations filing these reports with the Office of Thrift Supervision (as the successor agency to the Federal Home Loan Bank Board) to mail the reports to the Corporate and Securities Division, 1700 G Street NW., Washington, DC 20552. Section 563d.2, adopted on February 19, 1986, requires that one copy of each report required to be filed by a savings association also be filed with the appropriate District Office for the association. An exception to this requirement was made for preliminary forms of any filing, for Forms 3 and 4, and for filings submitted by entities other than the association itself or its counsel. These reports were required to be filed only with the Corporate and Securities Division. The determination to exempt certain filings was based, at the time, on an assessment of those securities filings that would be most relevant to supervisory and examination staff, and the number of copies ordinarily required to be filed.

The rationale for adopting § 563d.2, as stated in the preamble to the final regulation, was to "eliminate any possible delay in the distribution, review, and processing of these documents, and to improve the coordination of securities disclosure review with information available through the Board's supervisory and examination process * * *" (51 FR 7248 (March 3, 1986)). However, during the time period since this rule was adopted, the value of the interaction between the supervisory and examination process, on the one hand, and review of securities filings on the other, has become even more apparent with the complex new regime of requirements and sanctions now applicable to savings associations as a result of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Accordingly, in order to improve upon the timely and thorough review of securities filings, § 563d.2 is being amended to direct that one of the required number of copies of all required filings be sent to the District Office which supervises the savings association in question. As was true with the initial adoption of § 563d.2, this amendment does not require reporting associations or any other person to file any more copies than they currently file. The only change is that the few filings currently exempted from the requirement to forward one copy to the District office will no longer be given this exception.

Executive Order 12291

It is determined that this regulation does not constitute a "major rule" and, therefore, does not require the preparation of a final regulatory impact analysis.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B), the Office finds that, because of the minor, technical nature of this amendment, notice and public comment are unnecessary and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply.

List of Subjects in 12 CFR Part 563d

Authority delegations (Government agencies), Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends part 563d, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563d—SECURITIES OF SAVINGS ASSOCIATIONS

Subpart A—Regulations

1. The authority citation for part 563d continues to read as follows:

Authority: Sec. 3, as added by Sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); Sec. 4, as added by Sec. 301, 103 Stat. 280 (12 U.S.C. 1463); Sec. 5, 48 Stat. 130, as amended (12 U.S.C. 1464); Secs. 3(b), 12, 13, 14, and 23, 48 Stat. 882, 892, 894, 895 and 901, as amended (15 U.S.C. 78c(b), 78 l, m, n, and w; 78d–1).

2. Section 563d.2 is revised to read as follows:

§ 563d.2 Mailing requirements for securities filings.

Any savings association or other party required to file reports with the Corporate and Securities Division, as set forth in § 563d.1 of this part, shall file one of the required number of copies with the District Office of the District in which the association is located or in the case of an association located in more than one District, the District where the association's home office is located. Such copies shall be marked to the attention of the District Director. The originally-signed copy and all remaining copies of each filing shall be sent to the Corporate and Securities Division, at the address specified in § 563d.1 of this part. Copies sent to the District Offices shall be mailed on the same day as the original and remaining copies are forwarded to the Corporate and Securities Division.

By the Office of Thrift Supervision.

M. Danny Wall,

Director.

[FR Doc. 90–1973 Filed 1–29–90; 8:45 am]

BILLING CODE 6720–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–282–AD; Amendment 39–6497]

Airworthiness Directives; Boeing Models 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Models 737–100, –200, and –200C series airplanes, which currently requires the inspection of the aft engine mount cone bolt, installation of an improved secondary support as terminating modification, and repetitive inspection of the aft mount cone bolt indicator. This amendment adds a requirement to visually inspect the cone bolts, nuts, and secondary supports. This amendment is prompted; by reports of missing nuts, worn bolts, and disbonded honeycomb core of the improved secondary supports required by the existing AD. This condition, if not corrected, could result in an engine separation as the result of the improved secondary support not sustaining engine loads if the aft engine mount cone bolt were to fail.

EFFECTIVE DATE: February 15, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, ANM–120S, Airframe Branch; telephone (206) 431–1923. Mailing address: FAA, Northwest

Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On June 22, 1989, the FAA issued AD 89-14-08, Amendment 39-6254 (54 FR 28025; July 5, 1989), to require the inspection of the aft engine mount cone bolts on Model 737 series airplanes, and installation of an improved secondary support as a terminating modification.

Since issuance of that AD, recent reports from the manufacturer indicate that, during the inspections for counterfeit cone bolt nuts required by AD 89-21-02, Amendment 39-6342 (54 FR 40632; October 3, 1989), several operators of Boeing Model 737 series airplanes have found the aft engine mount improved secondary support installation required by AD 89-14-08 to have missing nuts, worn bolts, and disbonded honeycomb structure. This condition is the result of the airplane in-service engine heat acting on the shock absorbing honeycomb core and the thermal expansion of the engine combined with the engine vibration acting on the secondary mount bolt. The FAA has determined that this condition, if not corrected, could result in engine separation as the result of the improved secondary support not sustaining engine loads if the aft engine mount cone bolt were to fail.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 89-14-08 to require either repetitive ultrasonic inspection for cracks of the aft engine mount cone bolt, and replacement, if necessary; or a repetitive visual inspection for missing nuts, worn bolts, or disbonded honeycomb core of the improved secondary support, and repair, if necessary. This is considered to be interim action until a new terminating modification is designed, at which time the FAA may consider further rulemaking.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6254 (54 FR 28025; July 5, 1989), AD 89-14-08, with the following new airworthiness directive:

Boeing: Applies to Model 737-100, -200, and -200C series airplanes certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine separation as a result of the improved secondary support not sustaining engine loads if the aft engine mount cone bolt were to fail, accomplish paragraph A. or B., below:

A. 1. Within the next 150 landings after the effective date of this AD, unless previously accomplished within the last 150 landings, and thereafter at intervals not to exceed 300 landings, inspect for cracks in the aft engine mount cone bolt, in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using ultrasonic inspection techniques. Replace cracked cone bolts, prior to further flight, with bolts that have been inspected in accordance with the Boeing alert service bulletin, using magnetic particle inspection techniques. Replacement (newly installed) cone bolts must be ultrasonically inspected for internal cracking in accordance with the provisions of this paragraph at intervals not to exceed 300 landings.

Note: Special care should be taken to ensure proper seating of the cone bolt and washers prior to torquing to ensure that torque applied is maintained.

2. At the next ultrasonic inspection, as required by paragraph A.1., above, unless previously accomplished after cone bolt installation, accomplish a torque check to verify that the cone bolt is torqued to the proper torque limit specified in the appropriate Boeing maintenance manual. This check is to be accomplished without loosening the bolt.

a. If the cone bolt torque is below one-half the specified torque, remove the cone bolt and replace it with a serviceable bolt.

b. If the cone bolt torque is equal to, or above one-half the specified torque, but below the specified torque, re-torque to the specified level and re-check the torque within the next 300 landings. If, at that time, the torque is below 90 percent of the specified torque, replace the cone bolt with a serviceable bolt.

c. If the cone bolt is within 10 percent of the specified torque, no further torque checks are required.

After every cone bolt installation, accomplish the torque check procedure required by this paragraph, betwen 150 landings and 300 landings following installation.

B. Within the next 150 landings after the effective date of this AD, accomplish the following:

1. Inspect the aft mount cone bolt indicator for proper alignment. Improper alignment indicates a broken aft cone bolt. Broken cone bolts must be replaced, prior to further flight, with bolts that have been inspected in accordance with Boeing Alert Service Bulletin 737-71A1212, dated December 22, 1987, using magnetic particle inspection techniques. Repeat the inspection of the indicator thereafter at intervals not to exceed 125 landings.

2. Inspect the aft mount cone bolt improved secondary support for missing nuts, evidence of bolt wear, and disbonded honeycomb core. Missing nuts, worn bolts, or disbonded honeycomb core must be replaced prior to further flight with new identical parts. Repeat the inspection thereafter at intervals not to exceed 300 landings.

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

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

D. Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to

operate airplanes to a base in order to comply with the requirements of this AD.

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

This amendment supersedes Amendment 39-6254, AD 89-14-08.

This amendment becomes effective February 15, 1990.

Issued in Seattle, Washington, on January 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2039 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-158-AD; Amendment 39-6498]

Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 and 737 series airplanes, which requires modifications to include the use of Engine Pressure Ratio (EPR) information in the logic which enables the Takeoff Configuration Warning System (TOCWS). This amendment is prompted by the existence, in unmodified airplanes of these models, of a potential for the occurrence of nuisance takeoff warnings during taxi operations conducted with the flaps intentionally retracted. Nuisance warnings reduce the effectiveness of the warning system and frequently induce crew deactivation of the warning system. This condition, if not corrected, could lead to an attempted takeoff with the airplane in an improper takeoff configuration.

EFFECTIVE DATE: March 7, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dimtroff, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1938. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 727 and 737 series airplanes, which requires modifications to include the use of Engine Pressure Ratio (EPR) information in the logic which enables the Takeoff Configuration Warning System (TOCWS), was published in the **Federal Register** on December 16, 1988 (53 FR 50544).

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

Several commenters opposed the proposed rule and requested that it be withdrawn. These commenters indicated that their flight departments report having no problems with Takeoff Configuration Warning System (TOCWS) nuisance warnings when proper procedures are established and followed. They also indicated that any intentional deactivation of the TOCWS is a procedural and/or discipline problem. The FAA does not concur that the proposal should be withdrawn. The FAA has not been able to determine the exact measure of nuisance warnings due to the difficulty in acquiring dependable data. However, certain information shows that nuisance warnings do occur in some taxi operations, e.g., taxing with less than all engines operating. The FAA agrees that cockpit training and discipline and fundamental to the safety of the aircraft, but equally important is the functionality of the aircraft systems. The fact that nuisance warnings do indeed occur, and that some pilots (regardless of training or procedures) take measures to alleviate distractions caused by these warnings, indicates that the TOCW systems need improvements. Since less than all-engine taxis can now be considered a normal operating condition, to comply with the intent of FAR 25.1301 and 25.1309, nuisance warnings associated with the TOCW system must be eliminated or at least minimized. As discussed in the NPRM, the FAA has determined that the current likelihood of nuisance warnings reduces the functionality of the system below an acceptable level and, therefore, presents an unsafe condition. Further, the FAA has determined that the modifications required by this AD, by eliminating most nuisance warnings, will increase the functionality of the system to an acceptable level.

The majority of commenters indicated that the proposed rule would result in a less safe operating condition because the current pre-departure gate check of the takeoff configuration warning system could not be accomplished. For this reason, they requested that the proposal be withdrawn. The FAA does not concur. Analysis of the Boeing throttle level activated systems shows that the functional test performed before each flight tests only the throttle input logic, the throttle logic warning circuitry, and the warning device installed in the cockpit. Consequently, this simple preflight check does not ensure the takeoff configuration warning system will perform its intended function, since it does not check all of the system inputs which can trigger an out-of-configuration warning. In addition, the preflight check is subject to omission from the checklist through oversight, and it does not protect the TOCW system from deactivation after the check has been made. With the implementation of AD 88-22-09, Amendment 39-6054 (53 FR 41313; October 21, 1988), which requires repetitive checks of the takeoff warning system at 200 flight hour intervals, and the addition of EPR logic to the TOCW system, the FAA has determined that the overall safety of the TOCW system will be improved.

One commenter stated that installation of the EPR activated TOCWS will not entirely prevent nuisance warnings from occurring. If an aircraft is in a non-takeoff configuration, and an EPR of 1.4 is developed during taxi, the takeoff configuration warning will sound. The FAA agrees, but only on a qualified basis. An EPR setting of 1.4 is a relatively high thrust setting (equal to the thrust setting at brake release upon takeoff) and would not normally be attained during taxi. The FAA has determined this would reduce the frequency of nuisance warnings to an acceptable level.

Since the FAA has determined that 1.4 EPR provides an acceptable level of nuisance warnings, then the positioning of the throttle switch at an angle that produces 1.4 EPR would accomplish the same effect. Accordingly, the FAA has revised the final rule to allow this option

for those Model 727 airplanes that do not require the lesser angle for auto-speedbrakes. Low temperature limitations, as defined in the Airplane Flight Manual Appendix 39 or 51, as appropriate, must be observed and the TOCWS circuit breaker must be guarded and lock wired. This alternative action is a logical outgrowth of the proposal and is responsive to the comments.

Several commenters pointed out that the proposed compliance period of 18 months did not provide sufficient lead time for the manufacture, delivery and installation of the Boeing EPR kit within normal aircraft maintenance schedules. Requests ranged from "more time" to "48 months." After further review, the FAA has ascertained that, due to the difficulties associated with the manufacture of the electronic components, the average lead time needed by the manufacturer to assemble a complete EPR modification kit is approximately 20 months. Since there are 18 different mod kits currently needed to accommodate the many aircraft variations, each aircraft configuration (autothrottle, etc.) will have to be determined prior to ordering the kits. This will cause added delays in complying with the proposed compliance time. Additionally, the probability that new kits will have to be engineered to accommodate unique modifications made to the aircraft since delivery also necessitates extension of the compliance period. As a result, the FAA concurs with the commenters' request and has determined that the compliance period may be increased from 18 to 30 months without an adverse effect on safety. The final rule has, therefore, been changed to specify a compliance period of 30 months from the effective date of this rule.

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

There are approximately 1,197 Model 727 series airplanes and 479 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 819 Model 727 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts is estimated to be $5,000 per airplane. It is estimated that 189 Model 737 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 48 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of parts is estimated to be $3,400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,655,760.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 727 and 737 series airplanes, not equipped with a system incorporating Engine Pressure Ratio (EPR) logic for activation of the takeoff warning system, certificated in any category. Compliance is required within the next 30 months following the effective date of this AD, unless previously accomplished.

To prevent the occurrence of takeoff configuration nuisance warnings when taxi operations are conducted with the flaps intentionally retracted, accomplish the following:

A. For Boeing Model 727 series airplanes with Auto-Speedbrakes operative: Modify the logic which enables the Takeoff Configuration Warning Systems (TOCWS) in accordance with Boeing Service Bulletin 727-31-29, January 26, 1979; 727-31-33, dated November 26, 1980; 727-31-35, dated January 26, 1979; or 727-31-36, dated January 26, 1979, as appropriate.

B. For Boeing Model 727 series airplanes not equipped with Auto-Speedbrakes or with the Auto-Speedbrakes deactivated:

1. Modify the logic which enables the Takeoff Configuration Warning Systems (TOCWS) in accordance with Boeing Service Bulletin 727-31-29, January 26, 1979; 727-31-33, dated November 26, 1980; 727-31-35, dated January 26, 1979; or 727-31-36, dated January 26, 1979, as appropriate; or

2. Adjust the takeoff warning thrust lever actuated switches to operate at 19.5 degrees from the idle stop for takeoff configuration warning system arming in accordance with Boeing Service Bulletin 727-31-30, dated November 11, 1977. Install a circuit breaker guard (cover) on the TOCWS circuit breaker, and safety wire the guard. Operation of the airplane must be in accordance with the Limitations of the Takeoff Configuration Warning System specified in Appendix 39 or 51 (as appropriate) of the Airplane Flight Manual (AFM).

C. For Boeing Model 737 series airplanes: Modify the logic which enables the TOCWS in accordance with Boeing Service Bulletin 737-31-1033, Revision 1, dated January 14, 1983.

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

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

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

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

This amendment becomes effective March 7, 1990.

Issued in Seattle, Washington, on January 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2040 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-231-AD; Amendment 39-6500]

Airworthiness Directives; Boeing Model 737-300 and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) T89-23-52, which was previously made effective as to all known U.S. owners and operators of Boeing Model 737-300 and -400 series airplanes by individual telegrams. This AD requires reduction of cabin pressure, inspection and repair, if necessary, of the forward entry door stop fittings, and reporting of findings. This action is prompted by a report that certain airplanes may have been delivered with an inadequate number of fasteners in the forward left entry door fuselage aft frame bottom door stop fitting. This condition, if not corrected, could result in the loss of the forward entry door and rapid decompression of the aircraft.

DATES: Effective February 16, 1990, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T89-23-52, issued November 3, 1989, which contained this amendment.

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

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: On November 3, 1989, the FAA issued telegraphic AD T89-23-52, applicable to Boeing Model 737-300 and -400 series airplanes, which requires reduction of cabin pressure, inspection of the forward entry door stop fittings, and repair, if necessary. Additionally, that AD requires operators to submit a report of their inspection findings to the FAA. That action was prompted by a report from the manufacturer that 18 airplanes may have been delivered with an inadequate number of fasteners in the forward left entry door fuselage aft frame, bottom door stop fitting. This condition, if not corrected, could result in the loss of the forward entry door and subsequent rapid decompression of the airplane.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on November 3, 1989, to all known U.S. owners and operators of Boeing Model 737-300 and -400 series airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 737-300 and -400 series airplanes, line numbers 1770 to 1783, 1785, and 1787 to 1789, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of the forward entry door and subsequent rapid decompression of the airplane, accomplish the following:

A. Within 24 hours (clock hours, *not* flight hours) after the effective date of this amendment, incorporate the following limitation into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"*Airplane Pressurization*

Do not exceed 4.7 psi cabin pressure differential."

B. Within 20 flights after the effective date of this amendment, inspect the forward left entry door, fuselage aft frame, bottom door stop fitting at body station (BS) 349, water line (WL) 216, left buttock line (LBL) 65, for missing bolts (two) attaching the inboard side of the door stop fitting to the fitting support intercostal.

1. If two bolts are found, the AFM limitations required by paragraph A., above, may be removed and no further action is required.

2. If one or both bolts are missing, inspect and repair prior to further flight, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. The AFM limitations required by paragraph A., above, may be removed and no further action is required.

C. Within 10 days after completion of the inspection required by paragraph B., above, for each airplane, submit a report of inspection findings, postive or negative, to

the Manager, Seattle Manufacturing Inspection District Office, 7300 Perimeter Road South, Seattle, Washington 98108. This report must include the model of the airplane inspected, the date of inspection, and the number of bolts installed.

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

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

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

This amendment becomes effective February 16, 1990, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T89-23-52, issued November 3, 1989, which contained this amendment.

Issued in Seattle, Washington, on January 22, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2041 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-24-AD; Amendment 39-6499]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) which requires the removal of the Battery Bus Relay Diode on Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes. The actions specified in the AD will prevent deenergizing of the Battery Bus Relay due to a defective or failed diode, which could result in unrecoverable loss of electrical power to the airplane.

EFFECTIVE DATE: March 6, 1990.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

ADDRESSES: Fairchild Service Bulletins SA226-24-032 and SA227-24-013, both dated August 7, 1989, may be obtained from the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas, 78279-0490; or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Sam Lovell, Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5159.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring the removal of the Battery Bus Relay Diode on Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, SA227-AC airplanes was published in the **Federal Register** on October 10, 1989 (54 FR 41456). The proposal was prompted by an accident that occurred in West Germany. On February 8, 1988, a Fairchild Model SA227-AC flying near Dusseldorf, West Germany, sustained a lightning strike. After the lightning strike, the airplane was observed from the ground on two occasions without any lights. The airplane crashed shortly thereafter. Subsequent to the crash, it was discovered that the Battery Bus Relay Diode was shorted. The electrical system is designed so that if all electrical power is off, then the Battery Bus Relay must be energized to restore electrical power to the airplane. A shorted Battery Bus Relay Diode would prohibit the relay from being energized. Tests at Fairchild Aircraft Corporation on June 2, 1989, demonstrated that in an electrical circuit that simulated the circuit in the Model SA227-AC, a shorted diode would conduct electrical current. The shorted diode did not burn in two or open up while conducting electrical current for 5 minutes. Due to the shorted diode, the Battery Bus Relay could not be energized and electrical power could not be restored to the airplane. The FAA has determined that failure of the Battery Bus Relay Diode in combination with loss or interruption of electrical power could result in unrecoverable loss of electrical power to the airplane. Since this condition is likely to exist or develop on other airplanes of the same type design, an AD was proposed that would require the removal of the Battery Bus Relay Diode on Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, SA226-TC, SA227-TT, SA227-AT, and SA227-AC airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Comments were received from one commenter. The commenter stated that the AD was written because of the possibility of a lightning strike preventing the reenergizing of the Battery Bus Relay. The FAA does not agree. The AD was written because a shorted diode would prevent the reenergizing of the Battery Bus Relay. A shorted diode could be caused by a defective diode, a diode that had been overstressed and failed during operation, or other failure modes. The incident was brought to the attention of the FAA by the accident caused by a lightning strike. The commenter opposed the removal of the diode because the diode was installed to prevent high voltage (approximately 600V) spikes being imposed on the DC power system. These spikes could regularly fault the batteries/generators off the line causing a loss of DC power. The FAA does not agree. Tests at the Fairchild Aircraft Corporation disclosed that spikes in area of 290V were noted but did not create any problems during operation of the system. It should be further noted that operation of this circuit should only occur once per flight, and that should be on the ground when first bringing the systems on line.

The commenter proposed the addition of a 6-volt bulb, soldered in series with the diode, to form a safety valve to burn out in the event a dead short is created in the diode. The FAA does not agree with this proposal. This would require an additional part and create additional modes of failure. If the filament in the light bulb was open or the diode was open, then the system would be the same as if the diode was deleted. If the diode is not necessary, then the best way to preclude these problems is to remove the diode. In accordance with the preceding discussions, the proposal is adopted without change except for minor editorial revisions.

The FAA has determined that there are approximately 682 airplanes affected by the AD. The cost of modifying each airplane as specified in the AD is estimated to be $8 per airplane. The total cost is estimated to be $5,456. This cost is so small that it will not be a significant burden on any small entities operating those airplanes.

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

Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Fairchild Aircraft Corporation (formerly Swearingen Aviation Corporation): Applies to Models SA226–T (Serial Numbers (S/N) T201 thru T275, and T227 thru T291), SA226–T(B) (S/N T(B)276, and T(B)292 thru T(B)417), SA226–AT (S/N AT001 thru AT074), SA226–TC (S/N TC201 thru TC419), SA227–TT (S/N TT421 thru TT541), SA227–AT (S/N AT423 thru AT695), SA227–AC (S/N AC406, AC415, AC416, AC420 thru AC705, and AC707 thru AC733) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent an inadvertent deenergized battery bus relay, which could result in unrecoverable loss of the airplane's electrical power, accomplish the following:

(a) Modify the electrical system using the following procedures:

(1) Remove the access cover of the "J-Box", EP11.

(2) Locate Battery Bus Relay K40 and remove diode from across X1 and X2 terminals.

(3) Reinstall access cover.

(4) Using the Battery Switches, verify that battery voltage is present on the LH Essential, RH Essential, and Nonessential busses.

Note 1: Fairchild Service Bulletins SA226–24–032 and SA227–24–013, both dated August 7, 1989, pertain to the subject of this AD.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method or adjustment of the compliance time, which provides an equivalent level of safety, may be approved by the Manager, Airplane Certification Office, Federal Aviation Administration, Fort Worth, Texas 76103–0150.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Airplane Certification Office, Fort Worth, Texas. All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 6, 1990.

Issued in Kansas City, Missouri, on January 19, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–2037 Filed 1–29–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–278–AD; Amendment 39–6496]

Airworthiness Directives; McDonnell Douglas Model DC–9 Series and Model MD–88 Airplanes, Equipped with Westinghouse Bus Control Unit, Part Number 947F946–2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series and Model MD–88 airplanes, which requires the affected airplanes to be operated with an interim electrical operating procedure and restricted operation of the automatic landing system. This amendment is prompted by reports of loss of electrical power and/or electrical power interruption during flight, which are a result of a chattering AC cross-tie relay. This condition, if not corrected, could result in partial or total loss of generator electrical power.

DATE: Effective February 15, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1–HCW (54–60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Alan T. Shinseki, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5343.

SUPPLEMENTARY INFORMATION: An operator of a Model MD–88 airplane reported the complete loss of generator electrical power while enroute to its destination and an air turnback was made due to poor weather conditions at the scheduled destination. The flight crew reported losing the right generator bus first and, shortly thereafter, the left generator bus. The flight crew also reported hearing a buzzing sound from the electrical power center location, which subsided after the AC cross-tie switch was selected to the OPEN position. The flight instruments were lost and accompanied by random tripping of circuit breakers and illumination of cockpit annunciators. Electrical power was subsequently restored to both generators. Two additional occurrences were reported by the same operator.

Investigation by McDonnell Douglas has confirmed that the generator Bus Control Unit (BCU) has a faulty control circuit which activates without command and causes the cross-tie relay to chatter; however, the equipment supplier has been unable to isolate the problem within the BCU. This condition, if not corrected, could result in partial or total loss of generator electrical power.

Additionally, all earlier McDonnell Douglas Model DC–9 series airplanes now utilize part number 947F946–2 BCU's as spare units and are also susceptible to the reported problem.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires operation of the airplane with an interim electrical operating procedure and restricted use of the automatic landing system operation. This AD is intended to be interim action; when a terminating modification is approved and available, the FAA may consider further rulemaking.

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to Model McDonnell Douglas Model DC-9 series and Model MD-88 series airplanes, equipped with Westinghouse Bus Control Unit, Part Number 947F946-2, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent total loss of generator electrical power, accomplish the following:

A. Within 30 days after the effective date of this AD, add the following to the LIMITATIONS section of the approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

1. On takeoff with both engine generators and APU generator operating and APU bus switches selected to the ON position, the AC Bus X-TIE switch must be placed in the OPEN position. At or above 10,000 feet MSL with both engine generators operating, the APU may be shut down and the AC BUS X-TIE switch placed in the AUTO position.

Note: In the event of an in-flight failure of an engine generator that results in the APU generator power an AC bus, de-activate all galley power and place the other APU BUS switch in the ON position.

2. On takeoff with the APU generator inoperative, or an engine generator inoperative, dispatch is permitted in accordance with the present MMEL conditions except that the AC BUS X-TIE switch must be in the OPEN position. Verify that all transformer rectifiers (TR's) are operating and place the DC BUS X-TIE switch in the CLOSE position. Takeoff minimums are restricted to ceiling 1,000 foot and visibility 3 miles. The Captain must make the takeoff with his instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights. At or above 10000 feet MSL, place the DC BUS X-TIE switch in the OPEN position and the AC BUS X-TIE switch in the AUTO position.

Note: In the event of an in-flight failure of an engine generator following dispatching with the APU generator powering an AC bus, deactivate all galley power and place the other APU BUS switch in the ON position.

3. When operating with the AC BUS X-TIE switch in the AUTO position, if rapid cycling of the AC cross-tie relay occurs, manifested by a buzzing/chattering sound from the electrical power center and any combination of random circuit breaker trips, inappropriate aural warning messages, loss of some flight instruments, and/or flashing cockpit annunciators, place the AC BUS X-TIE switch to the OPEN position. If a generator trips off-line, it may be reset only once. If the engine generator fault cannot be cleared, the APU should be utilized, if available.

4. Prior to the approach with both engine generators operating, start the APU and place both APU BUS switches to the ON position. Place the AC BUS X-TIE switch to the OPEN position after APU electrical power becomes available.

5. Prior to the approach with only two generators operating, place the AC BUS X-TIE switch in the OPEN position. Landing minimums are restricted to Category I and the Captain must make the approach with his instrument incandescent flood lights adjusted to a level which would adequately compensate for the subsequent potential loss of his instrument integral lights.

6. In the event of an in-flight failure that results in an AC BUS not powered, place the DC BUS X-TIE switch in the CLOSE position.

7. In the event of an in-flight failure that results in both AC BUSES being powered by only one generator, the landing minimums are restricted to ceiling 1,000 feet and 3 miles visibility. The Captain must make the approach and landing.

8. Autoland is permitted with two engine generators operating and APU generator operating with both APU BUS switches in the ON position and the AC BUS X-TIE switch in the OPEN position. Reconfirm APU generator availability after "AUT LND/AUT LND" is indicated on the Flight Mode Annunciator(FMA). An autoland approach must be discontinued following a failure of an engine generator.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Business Unit Manager, Technical Publications, C1-HCW (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806.

This amendment becomes effective February 15, 1990.

Issued in Seattle, Washington, on January 19, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2038 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26115; Amdt. No. 1418]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its locations, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 19, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective March 8, 1990

Deadhorse, AK—Deadhorse, VOR/DME or TACAN RWY 4, Amdt 3
Deadhorse, AK—Deadhorse, VOR/DME or TACAN RWY 22, Orig
Santa Ynez, CA—Santa Ynez, VOR-B, Amdt. 7
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 14, Amdt 1, CANCELLED
Fort Morgan, CO—Fort Morgan Muni, NDB RWY 32, Amdt 1, CANCELLED
Gunnison, CO—Gunnison County, LOC RWY 6, Orig
Gunnison, CO—Gunnison County, ILS RWY 6, Amdt 1
Swainsboro, GA—Emanuel County, VOR/DME-A, Amdt 2
Thomson, GA—Thomson-McDuffie County, VOR-DME-A, Amdt 2
Indianapolis, IN—Indianapolis Metropolitan, VOR RWY 32, Amdt 7
Lafayette, LA—Lafayette Regional, VOR RWY 1, Amdt 16, CANCELLED
Lafayette, LA—Lafayette Regional, VOR/DME RWY 19, Amdt 1, CANCELLED
Lafayette, LA—Lafayette Regional, NDB RWY 10, Amdt 3
Lafayette, LA—Lafayette Regional, NDB RWY 21L, Amdt 3,
Lafayette, LA—Lafayette Regional, NDB RWY 28, Amdt 6
Lafayette, LA—Lafayette Regional, ILS RWY 21L, Amdt 3
Lafayette, LA—Lafayette Regional, RADAR-1, Amdt 7
Lafayette, LA—Lafayette Regional, RNAV RWY 3R, Amdt 3
Lafayette, LA—Lafayette Regional, RNAV RWY 10, Amdt 2
New Orleans, LA—New Orleans Intl (Moisant Fld.), LOC BC RWY 19, Amdt 11
New Orleans, LA—New Orleans Intl (Moisant Fld) ILS RWY 1, Amdt 13
Cadillac, MI—Wexford County, RNAV RWY 7, Amdt 7
Cadillac, MI—Wexford County, RNAV RWY 25, Amdt 6
Mt. Pleasant, MI—Mt. Pleasant Muni, VOR RWY 27, Amdt 12
Alexandria, MN—Chandler Field, VOR RWY 22, Amdt 14
Alexandria, MN—Chandler Field, NDB RWY 31, Amdt 4
Aurora, MO—Aurora Memorial Muni, VOR/DME-A, Amdt 2
Lebanon, MO—Floyd W. Jones Lebanon, SDF RWY 36, Amdt
Lebanon, MO—Floyd W. Jones Lebanon, NDB RWY 36, Amdt 3
Ozark, MO—Air Park South, VOR RWY 17, Amdt 4
Springfield, MO—Springfield Regional, VOR RWY 20, Amdt 15
Springfield, MO—Springfield Regional, NDB RWY 2, Amdt 15
Springfield, MO—Springfield Regional, ILS RWY 2, Amdt 16
Springfield, MO—Springfield Regional, RNAV RWY 14, Amdt 4
Stockton, MO—Stockton Muni, VOR/DME-A, Amdt 1
Hastings, NE—Hastings Muni, VOR RWY 4, Amdt 3
Hastings, NE—Hastings Muni, VOR RWY 14, Amdt 15
Hastings, NE—Hastings Muni, VOR RWY 32, Amdt 12
Hastings, NE—Hastings Muni, NDB RWY 14, Amdt 11
Hastings, NE—Hastings Muni, RNAV RWY 14, Amdt 4
Albuquerque, NM—Double Eagle II, ILS RWY 22, Amdt 1
Roxboro, NC—Person County, LOC RWY 6, Orig
Block Island, RI—Block Island State, VOR/DME RWY 10, Amdt 2
Block Island, RI—Block Island State, VOR RWY 28, Amdt 2
Block Island, RI—Block Island State, NDB RWY 10, Amdt 2
Beaumont/Port Arthur, TX—Jefferson County, LOC BC RWY 30, Amdt 19
Beaumont/Port Arthur, TX—Jefferson County, ILS RWY 12, Amdt 22
Beaumont/Port Arthur, TX—Jefferson County, RADAR-1, Amdt 8
Cleveland, TX-Cleveland Muni, VOR-A Amdt 3
Falfurrias, TX-Brooks County, NDB-A, Amdt. 1
Gainesville, TX-Gainesville Muni, NDB RWY 17, Amdt. 5
Houston, TX-Houston-Hull, NDB RWY 17, Amdt. 7
Houston, TX—Houston-Hull, NDB RWY 35, Amdt. 3
Houston, TX—Houston-Hull, ILS RWY 35, Amdt. 1
Houston, TX—Houston-Hull, RNAV RWY 17, Amdt. 5
Houston, TX—Houston-Hull, RNAV RWY 35, Amdt. 6
San Antonio, TX—San Antonio Intl, VOR-A, Amdt. 5
San Antonio, TX—San Antonio Intl, NDB RWY 3, Amdt. 37
San Antonio, TX—San Antonio Intl, NDB RWY 30L, Amdt. 11
San Antonio, TX—San Antonio Intl, ILS RWY 3, Amdt. 16
San Antonio, TX—San Antonio Intl, ILS RWY 12R, Amdt. 11
San Antonio, TX—San Antonio Intl, ILS RWY 30L, Amdt. 8
San Antonio, TX—San Antonio Intl, RADAR-1 Amdt. 24
San Antonio, TX—San Antonio Intl, RNAV RWY 30L, Amdt. 9
Leesburg, VA—Leesburg Muni/Godfrey Field, RNAV RWY 17, Amdt. 10
Sturgeon Bay, WI—Door County Cherryland, NDB RWY 1, Amdt. 8
Sturgeon Bay, WI—Door County Cherryland, SDF RWY 1, Amdt. 4

. . . Effective February 8, 1990

Patterson, LA—Harry P. Williams Memorial, VOR/DME-A, Amdt. 7
Stillwater, OK—Stillwater Muni, VOR RWY 17, Amdt. 7

. . . Effective January 16, 1990

Iron Mountain/Kingsford, MI—Ford, ILS RWY 1, Amdt. 10
Nashville, TN—Nashville International, ILS RWY 20L, Amdt. 1

. . . Effective January 12, 1990

Fairbanks, AK—Fairbanks Intl, ILS RWY 1L, Amdt. 5

. . . Effective January 11, 1990

Manassas, VA—Harry P. Davis Field, ILS RWY 16L, Amdt. 2

. . . Effective December 15, 1989

Sweetwater, TX—Avenger Field, NDB RWY 17, Amdt. 3

[FR Doc. 90-2042 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 512

Collection of Debts by the Government Under the Debt Collection Acts

AGENCY: United States Information Agency (USIA).

ACTION: Technical Amendments.

SUMMARY: USIA, as requested by the Office of Personnel Management, is publishing technical amendments to the debt collection guidelines which appeared in the **Federal Register** on November 17, 1987 (52 FR 43897-43903) and are codified in title 22 Code of Federal Regulations, part 300 to end, revised as of April 1, 1989.

EFFECTIVE DATE: January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Doug Cheney, Planning, Presentations and Systems Division, United States Information Agency, Room 668, 301 4th Street, SW, Washington, DC 20547, phone (202)485-2324, fax (202) 485-2323.

SUPPLEMENTARY INFORMATION: USIA promulgated regulations for the collection of debt under the Debt Collection Act of 1982 on November 17, 1987. This rule contained errors within subpart C—Salary Offset as discussed below which are corrected by this technical amendment as requested by the Office of Personnel Management.

Dated: January 9, 1990.

Stanley M. Silverman,

Comptroller.

The following technical amendments are made to USIA promulgated regulations for the collection of debt under the Debt Collection Act of 1982 on November 17, 1987 (published at 52 FR 43897-43903 and codified in title 22 Code of Federal Regulations, part 300 to end, revised as of April 1, 1989):

§ 512.17 [Amended]

1. In § 512.17, change "Agency employee" to "Agency employee or former employee".

2. Section 512.18(a) is revised to read as follows:

§ 512.18 Scope.

(a) *Coverage.* This subpart applies to Executive agencies, military departments, an agency or court in the judicial branch, an agency of the legislative branch and other independent entities of the Federal Government as defined in 5 CFR 550.1103, under the heading "Agency".

§ 512.18 [Amended]

* * * * *

3. In § 512.18(b), change "U.S.C. 5514" to "5 U.S.C. 5514".

§ 512.19 [Amended]

4. In § 512.19 the definition of "Executive Agency" is revised to read as follows:

* * * * *

"Executive Agency" means:

(a) An Executive Agency as defined in section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(b) A military department as defined in section 102 of title 5, United States Code;

(c) An agency or court in the judicial branch, including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(d) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(e) Other independent establishments that are entities of the Federal Government

* * * * *

§ 512.19 [Amended]

5. In § 512.19, in the definition of "Waiver", change "or 32 U.S.C. 710 5 U.S.C. 8346(b) or any other law." to "32 U.S.C. 710, 5 U.S.C. 8346(b) or any other law."

§ 512.22 [Amended]

6. In § 512.22(a)(3), change "consent by employee, waiver of offset or decision issued by the hearing official." to "notice that deductions will commence."

§ 512.23 [Amended]

7. In § 512.23(b), change "pursuant to 512.11" to "pursuant to 5 U.S.C. 8347 and 5 CFR 831.1801 *et seq*".

§ 512.27 [Amended]

8. In § 512.27(a)(1), change "under 5 U.S.C. 5514, the creditor agency shall complete and certify the appropriate debt certification specified by OPM." to "under 5 CFR 550.1104 and its own regulations, the creditor agency shall certify the debt in writing to the paying agency."

§ 512.27 [Amended]

9. In § 512.27(b)(1), change "appropriate debt certification" to "debt claim".

§ 512.27 [Amended]

10. In § 512.27(b)(2)(i), change "(b)(2)" to "(b)(2)(iii)"

§ 512.27 [Amended]

11. In § 512.27(b)(2)(i), change "debt claim and certification" to "certified debt claim".

§ 512.27 [Amended]

12. In § 512.27(b)(2)(i), add the following to the end of the paragraph: "It is the responsibility of the creditor agency for pursuing the claim."

§ 512.27 [Amended]

13. In § 512.27(c)(1), change "under 5 U.S.C. 5514 and this subpart" to "under 5 CFR 550.1101 *et seq.* and the creditor agency's own regulations".

§ 512.27 [Amended]

14. In § 512.27(c)(3), change "debt claim form." to "debt claim."

§ 512.27 [Amended]

15. Section 512.27(b)(2)(iii) is revised to read as follows:

* * * * *

(b) * * *

(2) * * *

(iii) Employees who transfer from one paying agency to another. If an employee transfers to a position served by a different paying agency subsequent to the creditor agency's debt claim but before complete collection, the paying agency from which the employee separates shall certify the total of collection made on the debt. One copy of the certification will be supplied to the employee, and another to the creditor agency with notice of the employee's transfer. The original shall be inserted in the employees official personnel folder. The creditor agency shall submit a properly certified claim to the new paying agency before collection can be resumed. The paying agency will then resume collection from the employee's current pay account, and notify the employee and the creditor agency of the resumption. The creditor agency will not need to repeat the due process procedure described by 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.*" Upon settlement or repayment of the debt all records of the debt will be removed from official personnel records.

* * * * *

[FR Doc. 90–2051 Filed 1–29–90; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8286]

RIN 1545–AK78

Apportionment of Expenses in the FSC and DISC Contexts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to apportionment of expenses in the FSC (foreign sales corporation) and DISC (domestic international sales corporation) contexts. This action is being taken in order to discontinue the apportionment of expenses of the related supplier of a DISC or a FSC to dividends from the DISC or FSC. This regulation is necessary to prevent a second apportionment to the dividend from a FSC or DISC of expenses already apportioned to determine the combined taxable income of the FSC or DISC and its related supplier.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning 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–28–86) (202–566–3452, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 17, 1988, the **Federal Register** published proposed amendments (53 FR 17473) to the Income Tax Regulations (26 CFR part 1) under section 861 (b) of the Internal Revenue Code of 1986. Corrections were published in the **Federal Register** on May 27, 1988 (53 FR 19369). Written comments responding to this notice were received. A public hearing was not requested and none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury Decision with revisions in response to those comments. The comments are revisions are discussed below.

Explanation of Provisions

The language in § 1.861–8(f)(1)(vi)(C) as proposed has been moved to § 1.861–

8(f)(2)(ii) and modified to clarify that for taxable years beginning after December 31, 1986, there will be a "second stage" apportionment whenever either of the administrative pricing methods of sections 994 and 925 (*i.e.*, the combined taxable income method and the gross receipts method) is used to determine the profit of the DISC or FSC, respectively.

Subdivision (iii) (A) of *Example* (23) in § 1.861–8(g) is modified to clarify that the statutory grouping is gross income from R's sale of the export property, the electronic equipment, and not gross income under section 863(b).

One commentator suggested that the proposed regulations at subdivision (iv) of § 1.861–8(g) *Example* (23) incorrectly determined, replying on section 927(e)(1), the related supplier's foreign source income from the export sales. Section 927(e)(1) provides that the foreign source income of the related supplier of a FSC from transactions which give rise the foreign trading gross receipts may not exceed the foreign source income that would have been earned by the related supplier had the analogous DISC pricing rule applied to the transaction. Accordingly, the proposed regulations, in applying section 927(e)(1), determined the related supplier's foreign source income using the 50% combined taxable income DISC pricing method which is analogous to the 23% combined taxable income FSC pricing method. The proposed regulations did not apply the second stage apportionment of general and administrative expenses and research and development expenses to the DISC dividends in determining what would have been the related supplier's foreign source income from the sales. The commentator suggested that the failure to use the second stage apportionment procedure did not follow Congressional intent to maintain parity in the level of foreign source income whether the transaction involves a FSC or a DISC prior to the enactment of the Tax Reform Act of 1986 (Pub. L. 99–514) since the second stage apportionment procedure could be used to determine a related supplier's foreign source income in 1986.

We believe, however, that section 927(e)(1) requires only a comparison to the analogous DISC pricing method as applicable for the year in which the related supplier's foreign source income is being determined. Therefore, the second stage apportionment procedure may be used only with regard to taxable years beginning before January 1, 1987, since the procedure is only applicable to those years. See subdivision (iv) of § 1.861–8(g) *Example* (22) and subdivision (vi) of § 1.861–8(g) *Example* (23).

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.

Drafting Information

The principal author of these regulations is Richard L. Chewning 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 these 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. * * *

Par. 2. Section 1.861–8 is amended by revising paragraph (f)(1)(iii), by removing and reserving paragraphs (f)(1)(ii) and (f)(1)(vi)(C), by designating paragraph (f)(2) as (f)(2)(i), and by adding a new paragraph (f)(2)(ii) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(f) *Miscellaneous matters*—(1) *Operative sections.* * * *

(iii) *DISC and FSC taxable income.* Sections 925 and 994 provide rules for determining the taxable income of a FSC and DISC, respectively, with respect to qualified sales and leases of export property and qualified services. The combined taxable income method available for determining a DISC's taxable income provides, without consideration of export promotion expenses, that the taxable income of the DISC shall be 50 percent of the combined taxable income of the DISC and the related supplier derived from sales and leases of export property and from services. In the FSC context, the taxable income of the FSC equals 23 percent of the combined taxable income of the FSC and the related supplier. Pursuant to regulations under section 925 and 994, this section provides rules for determining the deductions to be taken into account in determining combined taxable income, except to the extent modified by the marginal costing rules set forth in the regulations under sections 925(b)(2) and 994(b)(2) if used by the taxpayer. See *Examples* (22) and (23) of paragraph (g) of this section. In addition, the computation of combined taxable income is necessary to determine the applicability of the section 925(d) limitation and the "no loss" rules of the regulations under sections 925 and 994.

* * * * *

(2) *Application to more than one operative section.* * * *

(ii) When expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a DISC or former DISC and residual gross income, regardless of which of the administrative pricing methods of section 994 has been applied, such deductions are not also allocated and apportioned to gross income consisting of distributions from the DISC or former DISC attributable to income of the DISC or former DISC as determined under the administrative pricing methods with respect to DISC or former DISC taxable years beginning after December 31, 1986. Accordingly, *Example* (22) of paragraph (g) of this section does not apply to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years beginning after December 31, 1986. This rule does not apply to the extent that the taxable income of the DISC or former DISC is determined under the section 994(a)(3) transfer pricing method. In addition, for taxable years beginning after December 31, 1986, in the case of expenses, losses, and other deductions that have been properly allocated and apportioned between combined gross income of a related supplier and a FSC and residual gross income, regardless of which of the administrative pricing methods of section 925 has been applied, such deductions are not also allocated and apportioned to gross income consisting

of distributions from the FSC or former FSC which are attributable to the foreign trade income of the FSC or former FSC as determined under the administrative pricing methods. This rule does not apply to the extent that the foreign trade income of the FSC or former FSC is determined under the section 925(a)(3) transfer pricing method. See *Example* (23) of paragraph (g) of this section.

* * * * *

Par. 3. *Example* (22) of § 1.861–8(g) is amended by adding immediately after subdivision (iii) a subdivision (iv) to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (22). * * *

(iv) This *Example* (22) applies only to DISC taxable years ending before January 1, 1987, and to distributions from a DISC or former DISC with respect to DISC or former DISC taxable years ending before January 1, 1987.

* * * * *

Par. 4. *Example* (23) of § 1.861–8(g) is revised to read as follows:

§ 1.861–8 Computation of taxable income from sources within the United States and from other sources and activities.

* * * * *

(g) *General examples.* * * *

Example (23)—Foreign sales corporations—(i) *Facts.* R, a domestic corporation, manufactures a product line of electronic equipment and sells it to retailers both in the United States and in foreign countries. On January 1, 1988, R established FSC, a wholly owned corporation, in a possession of the United States. FSC elected under section 922(a)(2) foreign sales corporation status. Both R and FSC are calendar year corporations. R entered into a written agreement with FSC whereby FSC was granted a sales franchise with respect to the export sales of the electronic equipment, which is export property as defined in section 927(a). Under the agreement, FSC would receive commissions with respect to those exports equal to the maximum amount permitted to be received under the administrative pricing rules of section 925(a)(1) and (2). The maximum amount will equal the expenses incurred by FSC plus the maximum profit permitted to be earned by FSC under the pricing rules. In 1988, the profit earned by FSC was $354,424. This profit was determined using the combined taxable income administrative pricing method of section 925(a)(2). FSC paid taxes to the United States in the amount of $41,914 (*i.e.*, $354,424 x 8/23 x .34). The FSC did not pay any foreign tax. On September 15, 1989, FSC paid R a dividend of $312,510 (*i.e.*, profit less United States tax). The 100% dividends received deduction of section 245(c) applied to this dividend. In 1988, R had total export sales of $7,700,000 for which its cost of goods sold was $6,000,000. Thus, its gross income on those sales was $1,700,000. Those sales occurred outside the United States. Moreover, R had U.S. domestic sales of $12,000,000 on which it earned gross income of $900,000. R received royalty income from the foreign license of its electronic technology in the amount of $1,000,000. R's deductible general and administrative expenses allocable to all gross income are $125,000. For purposes of this example, it is assumed that R did not incur any research and development expenses. In addition, it is assumed that R did not incur any direct selling expenses with respect to either its domestic or foreign sales. FSC incurred $100,000 of expenses relating to the activities and functions referred to in Section 924 (c), (d) and (e). FSC will receive the maximum commission and profit under the combined taxable income method of section 925(a)(2). Under this method, FSC will receive a profit equal to 23% of the combined taxable income attributable to the export sale of the electronic equipment computed on a product line basis.

(ii) *Allocation.* For purposes of determining combined taxable income of R and FSC from export sales, R's general and administrative expenses of $125,000 must be allocated to and apportioned between gross income resulting from the production and sale of the electronic equipment for foreign markets, and from the production and sale of the electronic equipment for the domestic market.

(iii) *Apportionment*—(A) *Combined taxable income.* In order to compute the combined taxable income from the production and sale of the electronic equipment, R's general and administrative expenses of $125,000 are apportioned between the statutory grouping of gross income from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. None of R's general and administrative expenses are apportioned to the FSC distribution of $312,510. In the absence of more specific or contrary information, R's general and administrative expenses may be apportioned on the basis of gross income in the respective groupings, as follows:

Apportionment of general and administrative expenses to the statutory grouping, gross income from exports of electronic equipment:

$$\$125{,}000 \times \frac{\$1{,}700{,}000}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000)} = \$59{,}028$$

Apportionment of general and administrative expenses to the residual grouping, gross income from domestic sales of electronic equipment, foreign royalty income from licensing electronic equipment technology:

$$\$125{,}000 \times \frac{(\$900{,}000+\$1{,}000{,}000)}{(\$1{,}700{,}000+\$900{,}000+\$1{,}000{,}000)} = \$65{,}972$$

Total apportionment of general and administrative expenses	$125,000

On the basis of this apportionment, the combined taxable income and FSC's portion of the combined taxable income may be calculated as follows:

Gross income from exports	1,700,000
Less:	
FSC section 924(c), (d) and (e) expenses	100,000
Apportioned general and administrative expenses	59,028
Total expenses	(159,028)
Combined taxable income	1,540,972
FSC's income—23% of combined taxable income	354,424

(B) *R's taxable income.* R's total taxable income from the export sales equals 77% of combined taxable income and is computed as follows:

Gross receipts	$7,700,000
Cost of goods sold	6,000,000
Gross income	1,700,000
Less:	
Apportioned general and administrative expenses	59,028
Commission to FSC	454,424
Total	(513,452)
R's taxable income	1,186,548

As illustrated, all of the general and administrative expenses apportioned to combined taxable income are taken as deductions in computing R's taxable income.

(C) *R's foreign source royalty income.* In order to determine the amount of taxable income of R from sources without the United States relating to the royalty income, the remaining general and administrative expenses of $65,972 are apportioned between the statutory grouping, foreign royalty income, and the residual grouping of gross income from sources within the United States. The computations below illustrate this apportionment:

Apportionment of the general and administrative expenses to the statutory grouping, foreign royalty income:

$$\$65{,}972 \times \frac{\$1{,}000{,}000}{(\$1{,}000{,}000+\$900{,}000)} = \$34{,}722$$

Apportionment of general and administrative expenses to the residual grouping, gross income from domestic sales of electronic equipment:

$$\$65{,}972 \times \frac{\$900{,}000}{(\$1{,}000{,}000+\$900{,}000)} = \$32{,}250$$

(iv) *R's foreign source income from the sales using FSC as a commission agent.* R's section 863 (b) gross income of $1,700,000 from the export sales of electronic equipment manufactured in the United States and sold in foreign countries will qualify for sourcing partly from within and partly from without the Unites States in accordance with § 1.863–3. R's income is sourced on the basis of *Example* (2) of § 1.863–3 (b)(2). *See* Notice 89–11, 1989–1 C.B. 632. Accordingly, one-half of R's gross income (850,000) would qualify as foreign source gross income. Therefore, assuming all of R's expenses are apportioned on a gross basis, R's foreign source taxable income will be $593,274. However, since the export sales were made using a foreign sales corporation as a commission agent on the sale, section 927(e)(1) will operate to limit R's foreign source taxable income to $385,243. Under section 927(e)(1), R's foreign source taxable income on the export transaction may not exceed the amount which would have been treated as foreign source taxable income had the comparable DISC pricing rule, in this case the 50% of combined taxable income method, been used to compute FSC's profit. The calculations under section 927(e)(1) are as follows (for purposes of this example, it is assumed that there are no export promotion expenses):

Combined Taxable Income (CTI)	$1,540,972
DISC income (50% of CTI)	770,486
R's income (50% of CTI)	770,486
Source of R's taxable income had the DISC pricing method applied:	
U.S. source	$385,243
Foreign source	$385,243

(v) *Research and development expenses.* For purposes of this example, it was assumed R did not incur any research and development expenses (R & D expenses). Had R incurred R & D expenses, for purposes of computing the combined taxable income from the production and sale of the electronic equipment, those R & D expenses would have been allocated and apportioned between the statutory grouping of gross income from the export of the electronic equipment and the residual grouping of gross income from domestic sales and foreign licenses. R & D expenses would also have been apportioned to R's export sales and royalty income in order to determine R's section 863(b) taxable income from export sales. As with the apportionment of general and administrative expenses, none of the R & D expenses are apportioned to the dividends from the FSC.

(vi) *Apportionment of expenses in a DISC context.* For taxable years beginning after December 31, 1986, general and administrative expenses and R & D expenses of a related supplier in a DISC context are also allocated and apportioned as illustrated in this example. None of the expenses are apportioned to DISC dividends.

* * * * *

§ 1.861–8T [Amended]

Par. 5. Section 1.861–8T(f)(1)(iii) is redesignated as § 1.861–8T(f)(1)(ii).

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Approved: January 5, 1990.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–1971 Filed 1–29–90; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–90–001]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: At the request of the City of Chesapeake, the Coast Guard is issuing a temporary rule governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2 in Chesapeake, Virginia. This rule will extend the current temporary rule which limits bridge openings 24-hours a day, seven days a week, in order to reduce unnecessary wear and tear on the structure while still providing for the reasonable needs of navigation. Because of the length of time this temporary rule will be in effect, the Coast Guard requests comments on the rule. The temporary rule may be changed based on comments received.

DATES: This temporary rule is effective from January 15, 1990, through June 15, 1990, unless amended or terminated before that date. Comments on the temporary rule must be received on or before March 16, 1990.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments received will be available for inspection and copying at Room 507 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments,

data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for recommended changes to the temporary rule. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

Drafting Information: The drafters of this notice are Linda L. Gilliam, Project Officer, and LT. S. M. Fitten, Project Attorney.

Discussion of Temporary Rule: At the request of the City of Chesapeake, owner of the drawbridge in Chesapeake, Virginia, the Coast Guard is extending the temporary rule governing the operation of the drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake. The City of Chesapeake has indicated the need to extend the temporary operating schedule based on the fact that the bids obtained in April 1989 for the rehabilitation work were rejected by the Virginia Department of Transportation. In July 1989, the Virginia Department of Transportation awarded the contract to Blue Ridge Construction. The delay to the project start date is now being caused by material and equipment delivery delays, and additional work the Virginia Department of Transportation added to the contract after the award date.

The Centerville Turnpike Bridge will remain operating under its current temporary schedule which restricts bridge openings to on the even half-hour, once every two hours, 24-hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m., for vessels waiting to pass from January 15, 1990, to June 15, 1990, during which time the bridge will undergo rehabilitation work. Since this temporary schedule is necessary for the safety of the bridge, I find that good cause exists for publishing this temporary rule without publication of a notice of proposed rulemaking and for making it effective in less than 30 days.

Federalism Assessment

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

Economic Assessment and Certification

This temporary rule is not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact on these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. A new § 117.996 is temporarily added to read as follows:

117.996 Albemarle and Chesapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake shall open on the even half-hour, once every two hours, 24 hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m. for vessels waiting to pass.

3. This rule is effective from January 15, 1990, to June 15, 1990, unless amended or terminated before that date.

Dated: January 12, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90–2022 Filed 1–29–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area, Naval Air Station, Alameda, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish a restricted area in the waters in the vicinity of the Alameda Naval Air Station, San Francisco Bay and Oakland Inner Harbor, California. This amendment will clarify the boundary demarcation of the restricted area and make a minor editorial change to the regulation to remove obsolete material. The editorial change was included in a proposed rule published on 2 October 1989 (54 FR 40572–40576). The amendment to the restricted area will not result in increasing or decreasing the size of the area or add any additional restrictions on vessels operating in the vicinity of the area.

EFFECTIVE DATE: January 30, 1990.

ADDRESS: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Calvin Fong at (415) 744–3036 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Naval Air Station, Alameda has requested the regulations in 33 CFR 334.1020, which establish the restricted areas in vicinity of the Alameda Naval Air Station be amended for the purpose of clarifying the boundaries around the station breakwater on the southern and southwestern boundary of the air station. The regulations as presently promulgated establish restricted area boundaries by a specified distance from the shoreline. These amended regulations define essentially the same restricted area boundaries using specific coordinates. The remainder of the regulations remain unchanged.

Economic Assessment and Certification

This rule is issued with respect to a military function of the Department of Defense and the provisions of E.O. 122291 do not apply. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

Accordingly, the Corps of Engineers is amending 33 CFR 334.1020 as set forth below.

PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 226; (33 U.S.C.1) and 4 Stat. 892; (33 U.S.C.3)

2. In § 334.1020, paragraph (a) heading is removed, paragraph (a)(1) is redesignated as (a), paragraph (a)(1)(i) is redesignated as (a)(1) and revised to read as follows, paragraph (a)(1)(ii) is redesignated as (a)(2) and paragraph (a)(2) is redesignated as (b) and revised to read to read as follows:

§ 334.1020 San Francisco Bay and Oakland Inner Harbor; restricted areas in vicinity of Naval Air Station, Alameda.

(a) *The areas.* (1) The waters of San Francisco Bay bounded by the shore of Naval Air Station, Alameda, and a line beginning at a point on the north side of Oakland Inner Harbor Entrance Channel at approximately:

37°47'57" N, 122°19'43" W; WSW to 37°47'53" N, 122°19'57" W; SE to 37°47'46" N, 122°20'00" W; SE to 37°47'41" N, 122°19'52" W; S to 37°46'49" N, 122°19'52" W; E to 37°46'49" N, 122°19'28" W; SE to 37°46'46" N, 122°19'21" W; E to 37°46'45" N, 122°19'05" W; SE to 37°46'38" N, 122°18'59" W; SSW to 37°46'18" N, 122°19'05" W; SE to 37°46'00" N, 122°18'28" W; E to 37°46'00" N, 122°18'22" W; N to 37°46'03" N, 122°18'22" W; E to 37°46'00" N, 122°17'28" W; NE to 37°46'03" N, 122°17'26" W; where it joins the Naval Air Station, Alameda, Breakwater.

(2) * * *

(b) *The regulations.* (1) No vessel or other craft, except vessels of the United States Government or vessels duly authorized by the Commanding Officer, U.S. Naval Air Station, Alameda, California, shall navigate, anchor or moor in the area described in paragraph (a)(1) of this section.

(2) No vessel without special authority of the Commander, Twelfth Coast Guard District, shall lie, anchor, or moor in the area described in paragraph (a)(2) of this section. Vessels may proceed through the entrance channel in process of ordinary navigation or may moor alongside wharves on the Oakland side of the channel.

Dated: January 1, 1990.

Approved.

Patrick J. Kelly,

Brigadier General (P), USA, Director of Civil Works.

POSTAL SERVICE

39 CFR Part 111

Acceptance of Mail Bearing Incorrect Date in Meter or Mailer's Precancel Postmark

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: Postal regulations are amended to promote accuracy in postmark dates by tightening procedures for identifying and correcting mail presented with an incorrect date in the meter or mailer's precancel postmark.

EFFECTIVE DATE: June 17, 1990.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: Both the Postal Service and the public use dated postmarks to evaluate the length of time taken to deliver mail. It is important to all to minimize the occurrence of erroneous and misleading dates in postmarks. On March 14, 1989, the Postal Service published proposed changes to mail acceptance procedures concerning mailings bearing an incorrect date in a meter or mailer's precancel postmark (54 FR 10563–10565). After review of comments received on that proposal, the Postal Service published a second, revised proposed rule on June 15, 1989 (54 FR 25476–25479). The Postal Service received six comments on the second proposed rule. In general, most comments regarded the second proposal as making some improvement over the first, and offered further suggestions and criticisms.

With the aid of the views and suggestions received in two rounds of comments, and after seven months of further consideration, the Postal Service adopts a final rule incorporating much of what was in the second proposal, with some further adjustments. The principal theme underlying the final changes is the need to get date errors corrected where found, without exceptions or waivers that would admit substantial numbers of identified erroneously dated postmarks into the mailstream. A corollary theme is the need for specific, reasonable, and flexible sampling rules so that mailers will be fairly on notice as to what degree of a misdating problem will be treated as substantial enough to require reworking the mailing.

The final rule drops the option included in the second rule which would have allowed unlimited numbers of identified misdated meter postmarks to be accepted into the mailstream if the mailer chose to pay extra postage in proportion to the problem pieces, at the single-piece rate. The final regulation affords only the other two options, which get the erroneous dates out of the mail: reclaim and reenvelope, or reclaim and redate with a ".00" meter impression. The extra postage alternative had been added in response to earlier comments urging that rejection of mailings should be strenuously avoided or minimized and suggesting extra postage as an alternative. Upon careful reconsideration, we have reluctantly concluded that an extra postage formula raises too many difficulties and fails to address the misdating problem head on, as operational needs and "truth in dating" require. Several of the comments on the second proposal strongly objected to the operation of the postage formula as proposed, and advocated complex revisions. We think that the mailing industry and the Postal Service will be better served by focusing our attentions directly on minimizing the problem of incorrect and misleading dates in meter postmarks.

The final regulations also revise the criteria for rejecting a mailing based on sampling results. The second proposed rule provided for taking a second sample if the first detected even one incorrectly or illegibly dated piece, and would have required a mailer to take corrective action if five or more defective postmarks were found after two samples, except that the first occurrence within a 180 day period would have been excused no matter how many errors were found. The final procedures do not excuse a first violation, but set a threshold of at least two irregularities for sampling a second time and a total of six deficiencies among 100 pieces (or over five percent of a larger sample) in order for the Postal Service to require the mailer to reclaim the mailing for correction of the dating errors. These procedures meet the fair point expressed in many of the comments that a mailing should not be held up if sampling happens to hit one or two isolated deficiencies, while assuring that random samples will be taken and evaluated in a manner so that genuine problems can be found and addressed.

One comment suggested that the Postal Service specify a precise number of mail pieces to be sampled in all instances, instead of "at least 50 pieces" as proposed. The flexibility in sampling size was included to accommodate earlier comments, which we continue to

find persuasive, that a larger sampling or further sampling can be more reasonable than an inflexible 50-piece rule in particular circumstances, such as a very large mailing.

Under 374.221 in the second proposed rule, an existing regulation would have been extended permitting postmasters to waive the requirement for reenveloping or ".00" meter redating in limited circumstances involving equipment problems beyond the mailer's control or a misunderstanding at first use of a presort rate. A comment objected to the local discretion implicit in locally approved waivers. Another comment suggested that a waiver is inappropriate unless made available for all metered mail, not just presort. Upon further consideration, we have dropped the waiver provision. The harm to postal operations from knowingly accepting incorrectly dated metered mail now outweighs any remaining infrequent need for this provision, which was originally introduced some years ago to ease mailers' transitional problems at a time when presort was a new concept.

One of the comments urged that the Postal Service commit its resources to sampling or auditing mail before it is commingled by a presort bureau and presented to the Postal Service. We view this suggestion against the background of a number of comments submitted on behalf of presort bureaus in response to the two invitations, stressing that the Postal Service should recognize the valuable service performed by these businesses in improving quality control and filtering out poorly prepared mail. We agree, and have sought to accommodate the special needs of presort bureaus as far as we can in shaping these regulations. We do not think it would be appropriate to require postal ratepayers in general to incur the costs of additional preliminary quality checks which the presort bureaus are in the best position to perform. A presort operation with sufficiently rigorous quality control checks anticipating the sampling which the Postal Service will be doing should not encounter many instances of rejection of a mailing for correction of erroneous postmark dates.

Two of the comment letters offered a number of thoughtful editorial and clarifying suggestions, which have led to minor adjustments in the final rule. It was suggested that the term "presenter" be substituted for "mailer," to cover more clearly those situations when the Postal Service receives the mail from a presort or letter shop operation acting for others. For purposes of these regulations, we regard the presenter as the mailer in this situation, and have added language to the final instructions on sampling procedures to emphasize the point.

One comment suggested that meter equipment run with the flap or closure side of a letter-size envelope up and at the top, in order to place a ".00" meter impression with corrected date in the upper right corner of the non-address side as proposed in 144.476, could "chip" the edge of the envelope, making it susceptible to jamming in subsequent automated processing. The commenter suggested redating instead in the lower left corner of the non-address side. We appreciate the operating advice, and have revised 144.476 to provide two options for letter-size mail: either the upper right corner of the non-address side as originally proposed, or the lower left corner of the address side. These options should meet the needs of both the meterer and the Postal Service. Another comment suggested adding a requirement specifying a location for a second corrective ".00" meter impression where needed, but we are not persuaded this is likely to be enough of a problem to require additional language in this section of the regulation as revised.

A comment asked that mail presenters be excused of responsibility for illegible dates in a meter impression, on the ground that it is hard to assure against some occurrence of unreadable dates when metering items that contain irregular objects such as paper clips. While this may be true, the legibility requirement recognizes that mail presenters are in the best position to take the needed steps to minimize unreadable dates. Dropping the requirement would remove incentives to try to avoid such errors.

Some of the regulations included in the first two proposals were in the nature of detailed instructions for postal employees for identifying and handling meter dating errors. Upon further consideration, the Postal Service has elected to codify these portions of the regulations in its Handbook DM–102, *Bulk Mail Acceptance,* as subsection e of § 432.1, Initial Acceptance Checklist. Since the proposed version of these instructions appeared among the provisions included in the earlier notices, the final version is printed below for convenience.

1. Postage. If the mailing is metered, ensure any additional postage for residual pieces is attached to the back of the Form 3602–PC. The more detailed procedures for postage verification, which are performed during final verification, are contained in 432.234.

2. Markings and Endorsements. Verify that the mailpiece bears the correct markings and endorsements for the rate claimed.

3. Meter Impression and Date. Verify that the meter impression is legible and the date is correct and complete for the class of mail claimed. (See DMM 144.47.) Use the procedures described in 432.1e(4–8), below.

4. Sample. From each metered mailing, randomly select at least fifty pieces of mail. Alternatively, for presorted mailings, the sample may use the same mailpieces selected for presort verification, or, preferably, may use other pieces taken from any part(s) of the mailing. Sample pieces should be taken from several places in the mailing; avoid concentrating the sample as much as possible. The size of the sample may be increased to ensure it provides a reliable indication of what is contained in the mailing. Examination of the sample for purposes of this section will include the date, place of mailing, and markings or endorsement shown in the meter impression, as well as the completeness, placement, and legibility of the impression.

For mailings at other than the single-piece rates, the examination must be made and completed as part of the acceptance process. For single-piece mailings, the examination may be made of pieces either awaiting or during distribution; if pieces from individual mailers can be identified, select fifty pieces from each.

5. Postal Error. Do not treat as errors any pieces which are legibly postmarked the previous date if they are paid at the single-piece rate and were deposited in a collection box after the last collection (see DMM 144.471), or (regardless of rate) were not collected by the Postal Service as scheduled on the date appearing in the meter postmark.

6. Sample Results. If the random sample of fifty pieces reveals two or fewer pieces with improperly prepared meter impressions or incorrect or illegible meter dates, accept the mailing. If three to five pieces are found, examine at least fifty additional pieces in the mailing to determine the extent of the problem. If six or more pieces in the first 50-piece sample, or six or more of the 100 total pieces sampled, or more than five percent of a larger quantity sampled, are found to have improperly prepared meter impressions or incorrect or illegible meter dates, advise the mailer of the errors in person or by telephone within 30 minutes of the detection of the errors. Provide the mailer with a specific description of the errors, including the meter number(s)

appearing on the improperly prepared pieces. (For purposes of this section, the mailer is the party who presents the mailing to the Postal Service.)

7. Corrective Action. Contact the mailer in person or by telephone within 30 minutes of the detection of the errors and give the mailer two options: 1) reclaim the mailing and reenvelope the mailpieces; or 2) reclaim the mailing and apply a properly prepared and legible ".00" meter impression with the correct date. The mailer may reclaim only one segment of the mailing (such as all the pieces from on client, if the mailing is presented by a presort bureau), if it is demonstrated, to the satisfaction of the Postal Service, that such action will remove all the pieces with improperly prepared or illegible meter impressions or incorrect dates in the meter postmarks. If removal of some mailpieces will result in remaining portions of the mailing no longer satisfying other applicable volume or presort requirements, additional postage must be paid to represent the difference between the amount originally affixed and the amount now due at the rate for which the pieces qualify.

8. Resubmitted Carrier Route First-Class, Presorted Frist-Class, Nonpresorted ZIP+4, ZIP+4 Presort, or ZIP+4 Barcoded Rate Mailings. If a mailer elects to correct the presort or preparation problems in a mailing which had resulted in its disqualification when originally presented for acceptance, but is unable to resubmit that mailing on the same day, the data shown in the meter or mailer's precancel postmark must be corrected by reenveloping or applying a legible ".00" meter impression which includes the correct date of mailing.

Accordingly, the Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 140—POSTAGE

2. In 144.47 revise 144.471 and add 144.476 to read as follows:

§ 144.47 Date of Mailing

144.471

The date shown in a meter postmark must be the actual date of deposit, except when the mailpiece is deposited after the last scheduled collection of the day; or as provided by 144.54 or 374.22. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection.

* * * * *

144.476

A ".00" postage meter impression used to correct the date of metered mail must be placed (for letter-size mail) on either the nonaddress side in the upper right hand corner or on the address side in the lower left corner. On flats or parcels, it must be placed adjacent to the postage meter stamp. The date of the ".00" impression must be the actual date of deposit.

3. In 144.5, revise 144.534 and 144.54 to read as follows:

144.534 Examination.

Metered mail must be examined for accurate dating using the procedures in Handbook DM–102, *Bulk Mail Acceptance*, 432.

144.54 Mailing Irregularities.

Metered mail will be examined by the Postal Service to detect irregularities in preparation and dating. In this regard, postal personnel will follow the procedures in Handbook DM 102, *Bulk Mail Acceptance*, 432. Errors will not include any pieces which are legibly postmarked the previous date if they were deposited in a collection box after the last collection (see 144.471), or were not collected by the Postal Service as scheduled on the date appearing in the meter postmark.

4. In 144.6 revise 144.61g to read as follows:

144.61 Quarterly Verification.

* * * * *

g. Examine metered mail being sampled for improper mailing practices, such as incorrect or illegible postmarks and other metered mail preparation deficiencies. Follow the procedures in Handbook DM–102, *Bulk Mail Acceptance*, 432, if errors are detected.

5. In 374.2, revise 374.22 to read as follows:

374.22 Correction of Dates on Resubmitted Metered and Mailer's Precancel Postmark Mailpieces.

If a mailer elects to correct the presort or preparation problems in a mailing which had resulted in its disqualification when originally presented for acceptance, but is unable to resubmit that mailing on the same day, the date shown in the meter or mailer's precancel postmark must be corrected by reenveloping or applying a legible ".00" meter impression which includes the correct data of mailing.

A transmittal letter making the changes in the pages of the Domestic Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90–2078 Filed 1–29–90; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42092B; FRL 3662–3]

RIN 2070–AB07

Alkyl Phthalates Technical Amendment; Consent Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the list in 40 CFR 799.5000 concerning a consent order for testing alkyl phthalates and establishes a new § 799.5025 for mixtures subject to consent orders. This action is necessary to remove an incorrect description of one of the test mixtures, di(heptyl, nonyl, undecyl) phthalate (mixed isomers) and its associated Chemical Abstract Service (CAS) Registry Number, and add the correct description of the commercial mixture to be tested. This also affects export notification under section 12(b) of the Toxic Substances Control Act (TSCA) for these mixtures.

EFFECTIVE DATE: January 30, 1990.

FOR FURTHER INFORMATION CONTACT: John E. Schaeffer, Jr., Existing Chemical Assessment Division (TS-788), Office of Toxic Substances, Environmental Protection Agency, Rm. 100, NE Mall, 401 M St., SW., Washington, DC 20460, (202) 475-8127.

SUPPLEMENTARY INFORMATION: In accordance with section 4(a) of TSCA, an enforceable Consent Order was

established for certain alkyl phthalates as described in the **Federal Register** published January 9, 1989 (54 FR 618), and 40 CFR 799.5000 was amended to add the chemicals to the list of consent orders.

One of these alkyl phthalates, di(heptyl, nonyl, undecyl) phthalate (D711P), is wrongly described as di(heptyl, nonyl, undecyl) phthalate (mixed isomers) CAS Number 68515–42–4. This incorrect description encompasses phthalate esters containing all alcohols in the 7 to 11 carbon range, including those of even numbered carbons. In fact, the test substance that the parties agreed to utilize is a mixture of phthalates compounded from mixtures of alcohols specifically of 7, 9, and 11 carbon chain lengths. This rule removes the incorrect description of D711P from § 799.5000 and adds a new section that contains the correct description of the commercial D711P required to be tested. A similar change has been made to the Consent Order on the request of the persons subject to the Order. The correct description encompasses a mixture of six test substances.

Section 799.5000 was established to be a list of chemical substances and mixtures subject to TSCA section 4 consent orders. However, it is structured to include only substances and mixtures that have CAS Registry Numbers. Because the mixture that is the subject of this notice does not have a CAS Number, EPA is establishing a new § 799.5025 for mixtures subject to section 4 consent orders that do not have CAS Numbers.

Any mixture included in this new section, in addition to those substances and mixtures listed in § 799.5000, is subject to TSCA section 12(b) export notification requirements. Thus any person who intends to export a mixture identified in § 799.5025 must comply with 40 CFR part 707. For the mixture which now appears in § 799.5025, the export notification requirements apply only to persons who intend to export the designated mixture of six substances, regardless of the proportions of the six substances in the mixture. However, the export notification requirements do not apply (1) to persons who intend to export other mixtures that contain some, but not all, of the identified constituents of the designated mixture, (2) to persons who intend to export a mixture of the six substances and other constituent substances, and (3) to persons who intend to export any of the individual constituents that make up the designated mixture, unless those other mixtures or the individual substances are listed separately, in § 799.5000 or § 799.5025, or are already subject to section 12(b) because of other actions EPA has taken under TSCA.

List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Test procedures.

Dated: January 21, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by removing Di(heptyl, nonyl, undecyl) phthalate (mixed isomers), CAS No. 68515–42–4; and by changing the title to read as follows:

§ 799.5000 Testing consent orders for substances and mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

3. By adding a new § 799.5025 to read as follows:

§ 799.5025 Testing consent orders for mixtures without Chemical Abstracts Service Registry Numbers.

This section sets forth a list of mixtures (with no Chemical Abstracts Service Registry Numbers) which are the subject of testing consent orders adopted under 40 CFR part 790. Listed below are the mixtures which are the subject of these orders and the **Federal Register** citations providing public notice of such orders.

Mixture/substance (CAS No.)	Required test	FR citation
Di(heptyl, nonyl, undecyl) phthalate (D711P) as a mixture of the following six substances: (1) diheptyl phthalate (branched and linear isomers), CAS No. 68515–44–6 (2) dinonyl phthalate (branched and linear isomers), CAS No. 68515–45–7 (3) di(heptyl, nonyl) phthalate (branched and linear isomers), CAS No. 111381–89–6 (4) diundecyl phthalate (branched and linear isomers), CAS No. 3648–20–2 (5) di(heptyl, undecyl) phthalate (branched and linear isomers), CAS No., 111381–90–9 (6) di(nonyl, undecyl) phthalate (branched and linear isomers), CAS No. 111381–91–0)	Environmental effects	January 9, 1989.

[FR Doc. 90–2068 Filed 01–29–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Petition No. P5–89, Docket No. 90–03]

Application of Sea-Land Service, Inc. for Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC") amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This amendment of part 550 adds a new exemption for carriers providing port-to-port service in the Puerto Rico domestic offshore trade. Such carriers now are permitted to

publish on one day's notice reductions in existing individual commodity rates, and rates on new tariff items.

EFFECTIVE DATE: This action is effective January 30, 1990.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Sea-Land Service, Inc. ("Sea-Land") has filed an Application for Exemption ("Application") under section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a ("1916 Act"), that seeks an exemption from the 30-day tariff filing requirement of section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844 ("1933 Act"). The exemption would permit carriers in the FMC-regulated United States/Puerto Rico trade to publish new individual commodity rates, or reductions in existing individual rates, on one day's notice.

A notice of the filing of the Application was published in the **Federal Register** (54 FR 40189, September 29, 1989) and comments supporting the Application were submitted by Trailer Marine Transport Corporation ("TMT"), Puerto Rico Maritime Shipping Authority ("PRMSA"), and Gulf Atlantic Transport Corporation ("GATCO"). Comments opposing the Application were submitted by Pueblo International, Inc. ("Pueblo").

The Application

Sea-Land alleges that FMC-regulated carriers in the U.S./Puerto Rico trade are at a competitive disadvantage vis-a-vis carriers filing tariffs with the Interstate Commerce Commission ("ICC"). The primary cause for this disadvantage, Sea-Land alleges, is the differing notice periods applicable to rate reductions at the two agencies. Section 2 of the 1933 Act requires carriers to provide 30 days' notice of any tariff change, including rate reductions and new rates. However, the ICC has adopted regulations that permit new or reduced intermodal rates to go into effect on one day's notice (49 CFR 1312.39(h)(1)). Sea-Land alleges that this hampers FMC-regulated carriers in meeting the needs of their customers. Sea-Land Application at 2–3.

Sea-Land points out that the FMC granted a similar petition in *Matson Navigation Co., Inc.—Application for Section 35 Exemption*, No. P5–88, 24 S.R.R. 1518 (1989). Sea-Land alleges that the conditions that led to approval of that petition exist in the Puerto Rico trade. Sea-Land Application at 3–4.

Comments

A. GATCO

GATCO is an FMC-regulated common carrier by water operating between U.S. Atlantic and Gulf Coast ports and ports in Puerto Rico. It states that it is in competition with other carriers operating under tariffs filed with the ICC. GATCO alleges that it is at a competitive disadvantage with respect to these ICC-regulated carriers by reason of the one-day notice period allowed by the ICC. GATCO urges the FMC to eliminate this competitive disadvantage by granting Sea-Land's application. GATCO notes that a similar exemption was granted to Matson in the Hawaii trade.

B. PRMSA

PRMSA is a common carrier by water providing service between the U.S. and Puerto Rico primarily under joint through tariffs filed with the ICC. In addition, it publishes an FMC tariff naming rates for commodities requiring controlled temperature. PRMSA alleges that FMC-regulated carriers are at a competitive disadvantage vis-a-vis ICC-regulated carriers because the ICC permits filings of new or reduced rates on one day's notice. PRMSA also points out that the FMC granted a similar exemption for Matson in the Hawaii trade. It notes that the ICC, in establishing a one day notice period, found that the one-day notice period would permit carriers to respond quickly to the needs of the shipping public.

C. TMT

Until recently, TMT served the U.S.-Puerto Rico trade exclusively under an ICC-regulated tariff. On December 1, 1989, it began offering service pursuant to a tariff filed at the FMC. It continues to operate under its ICC tariff as well. TMT alleges that it requires the subject exemption to make its new FMC service competitive with the ICC-regulated service of other carriers.

TMT notes, however, that the Application does not apply to the Virgin Islands trade, although Sea-Land's FMC tariff applies to both the Virgin Islands and Puerto Rico trades. TMT explains that the rate for the Virgin Islands is constructed by adding an arbitrary to the Puerto Rico rate; thus any change to the Puerto Rico rate will automatically affect the Virgin Islands rate. TMT suggests that the exemption be extended to the Virgin Islands trade.

D. Pueblo

Pueblo operates a chain of grocery stores and retail food outlets in Puerto Rico and the Virgin Islands. Pueblo argues that the Application for exemption should be supported by "clear and convincing evidence" because of Sea-Land's share of the market and because it "requests a very substantial withdrawal of agency regulation." Pueblo Comments at 2.

Pueblo argues that the real issue here concerns the level of rates filed at the ICC. It believes that carriers will attempt to "forum shop" in order to avoid regulation of their rates. Pueblo believes that the application will assist the carriers in their "forum shopping." Pueblo Comments at 4.

Pueblo alleges that Sea-Land moves most of its cargo pursuant to joint-through rates filed with the ICC. It states that Sea-Land cannot point to a single case in which it lost cargo due to the thirty-day notice requirement of the FMC. Sea-Land is allegedly unlike Matson which did suffer harm. Pueblo Comments at 3.

Pueblo claims that it operates in a very competitive environment and that it is essential for it to know what its competitors are paying for transportation. If a competitor of Pueblo obtains a cost advantage through a lower transportation rate, Pueblo states that the results to Pueblo can be severe. Pueblo states that it must book freight days or weeks in advance of the shipment. If the application is granted, Pueblo believes that it will be unable to plan in advance. Pueblo Comments at 6.

Finally, Pueblo argues that the Sea-Land proposal is the first step toward eventual deregulation of the domestic offshore trades. Pueblo Comments at 7.

Discussion

Section 35 of the 1916 Act provides in pertinent part:

> The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

This Commission has granted carriers exemptions from tariff filing requirements in a limited number of cases. For example, in *Puget Sound Tug & Barge Co.—Exemption*, No. 88–22, 24 S.R.R. 1146 (1988), the FMC granted Puget Sound Tug & Barge Co. an

exemption from tariff filing for transportation from Seattle, Washington, to the vicinity of Kivalina, Alaska during 1988 and 1989. In *Petition For Exemption From Tariff Filing Requirements Previously Granted By Commission Order and Cross Petition For Revocation Of Exemption*, No. 83–54, 22 S.R.R. 1040 (1984), the FMC granted an exemption from tariff filing for all common carrier service to the area of Western Alaska surrounding the Kuskokwim River. Most recently, in *Matson Navigation Co.—Application For Section 35 Exemption*, and *Tariff Filing Notice Periods—Exemption*, No. 89–03, 24 S.R.R. 1604 (1989), we granted an exemption to Matson, and later all carriers in the Hawaii trade, to permit individual rates to be filed on one day's notice if the filing is a new or reduced rate.[1] GRIs and GRDs were not included within the exemption and still must be filed on sixty days' notice. The Sea-Land Application seeks the same exemption for the Puerto Rico trade.

Although Pueblo does not go so far as to argue that the Application is beyond the scope of section 35, it argues that the Application should be held to a higher standard of proof because it appears to be a "very substantial withdrawal of agency regulation." Pueblo Comments at 2. There is little, if any, support for Pueblo's position.

The Application applies only to individual new or reduced rates. As so limited, it should not impair effective rate of return regulation which seems to be Pueblo's greatest concern.[2] Nor would it appear to have any effect on the regulation of individual rates. New or reduced individual rates are rarely challenged. Suspension of such rates is even more rare. If there is a challenge to a reduction of an individual rate, typically it is on the grounds of discrimination, not on cost grounds. Discrimination is generally shown by evidence of the reduced rate's adverse impact on the complaining party's business. Such evidence of adverse impact is already in the hands of the complaining party. Unlike the case of GRIs and GRDs, there is no supporting financial information that must be evaluated prior to the rate becoming effective.

Pueblo's concerns seem largely speculative and are not shared by other shippers or carriers that may have occasion to challenge a rate reduction. No other shipper has filed comments in regard to Sea-Land's Application. Nor have carriers expressed any concern that the reduced notice period will prevent them from protesting a rate of a competing carrier they believe is unreasonable or discriminatory.

Pueblo's additional concern that it will not know what its competitors are paying for ocean transportation until after the fact may be correct but it does not provide a valid reason for denying the Application. If the Application is approved, FMC-regulated carriers will be able to compete on an equal footing with ICC-regulated carriers with respect to rate reductions. This should be of substantial benefit to the shipping public. FMC-regulated carriers and shippers will be able to negotiate lower rates as the need arises and the shipping public will be able to take advantage of those rates immediately, not thirty days later when it may be too late. Of course, any time that there is increased competition there is greater uncertainty, but this standing alone is no reason to deny the Application.[3]

Pueblo misses the point in contending that Sea-Land and the other carriers supporting the application have suffered no harm as a result of the 30-day filing requirement of the 1933 Act because virtually all of their cargo moves under ICC tariffs. Section 35 does not require a showing of present harm. Pueblo does not deny that a carrier moving cargo subject to the 30-day filing requirement of the 1933 Act is at a competitive disadvantage vis-a-vis ICC-regulated carriers. We are under no obligation to withhold remedial action until FMC-regulated carriers have actually suffered substantial injury.

TMT seeks an extension of the exemption to cover the U.S. Virgin Islands on the grounds that Sea-Land constructs its Virgin Islands rates by adding an arbitrary to its Puerto Rico rates. Because the Virgin Islands were not included in the Application or notice of its filing in the **Federal Register**, TMT's request is beyond the scope of this proceeding. However, TMT is correct that any change in the Puerto Rico rates would necessarily effect Sea-Land's Virgin Islands rates. In order to avoid affecting rates in the U.S. Virgin Islands trade, it will be necessary for carriers utilizing the exemption to publish their United States/Puerto Rico rates separately from any rates applicable to the U.S. Virgin Islands trade.

Contrary to Pueblo's suggestion, we believe that the present record is sufficient for a thorough consideration of the Application. Section 35's requirement that "[n]o order or rule of exemption . . . shall be issued unless opportunity for hearing has been afforded interested persons," 46 U.S.C. app. 833A, does not mandate a formal evidentiary hearing. The legislative history of section 35 makes it clear that "a reasonable opportunity to be heard" is all that is required. Exemptions from Shipping Act, 1916, H.R. Rep. No. 2248, 89th Cong., 2d Sess. 4 (1966). Interested parties have had the opportunity to comment and no party has identified what additional evidence it would produce at a formal evidentiary hearing.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers; reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 550 continues to read as follows:

[1] 46 CFR 550.1(b).

[2] We have declined to exempt carriers in the Puerto Rico/Virgin Islands trade from the sixty-day notice requirement for general rate increases ("GRI") or general rate decreases ("GRD") in *Amendment Of Certain Regulations Governing Common Carriers By Water In The Domestic Offshore Commerce Of The United States*, No. 82–2, 22 S.R.R. 1195 (1984). The Commission observed that abandonment of the sixty-day notice requirement would make it economically and practically impossible for the Commission and interested third parties to review and respond to such a GRI/GRD prior to its becoming effective.

[3] Presumably, Pueblo is presently unable to determine in advance what its competitors are paying for transportation of cargo moving in an ICC-regulated service. Given that most cargo in the U.S./Puerto Rico trade presently moves pursuant to tariffs filed with the ICC rather than the FMC, approval of the subject Application would not appear to represent a significant change in the status quo.

Authority: 5 U.S.C. 553; 46 U.S.C. App. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1, a new paragraph (c) is added to read as follows:

§ 550.1 Exemptions.

* * * * *

(c) Carriers providing port-to-port transportation between the United States and Puerto Rico may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the Act and the rules of this part.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-1843 Filed 1-29-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[DA 90-37]

Broadcast Auxiliary Service; STL/ICR Transmitters

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In October 1985, the Commission issued a *Report and Order* (50 FR 48596, November 26, 1985) which required that each authorization for studio-transmitter-link/inter-city relay transmitters use notified or type accepted equipment. The effective date of the new rule was December 15, 1985. However, transmitters marketed prior to that effective date were to be "grandfathered" until July 1, 1990. This instant action extends the compliance date for "grandfathered" transmitters to July 1, 1993. This delay, which was requested by numerous commenters, is taken to offset the costs involved in abiding by the new rule. Further, because congestion in the STL band has not developed at the rate anticipated when the rules were enacted, a delay should not have any significantly adverse impact on STL-ICR service.

EFFECTIVE DATE: January 30, 1990.

FOR FURTHER INFORMATION CONTACT: James McNally, Mass Media Bureau, Policy and Rules Division, 632-9660.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1990.

Released: January 18, 1990.

In the matter of notification of broadcast auxiliary studio-transmitter-link/inter-city relay (STL-ICR) transmitters.

By the Chief, Mass Media Bureau:

1. On October 31, 1985, the Commission adopted a *Report and Order* in MM Docket No. 85-36, which required that effective December 16, 1985, studio-transmitter-link/inter-city relay ("STL/ICR") transmitters to be operated in the 944-952 MHz band possess a grant of notification prior to being marketed. Transmitters marketed prior to the effective date of the new rule were to be "grandfathered" for a five year period ending on June 30, 1990. On or after July 1, 1990, all STL/ICR transmitters must have received a grant of notification. This requirement was adopted to ensure that all STL/ICR transmitters would meet long-standing (and unchanged) technical standards and to encourage the production of STL/ICR equipment capable of using narrower bandwidths. The latter effect was considered particularly important in view of increasing demands being placed on STL/ICR spectrum, particularly in larger urbanized areas.

2. On November 8, 1989, the Commission received a letter from Booth, Freret and Imlay, counsel for the Society of Broadcast Engineers ("SBE"). The letter notes that traditionally, new technical rules will "grandfather" existing equipment from compliance, but that this was not done in MM Docket No. 85-36 because of the expectation of extreme STL band congestion. However, SBE notes that with few exceptions, new users of the STL band have been accommodated without recourse to the narrowbanding provisions adopted in MM Docket No. 85-36. SBE also indicates that 40% of stations use STL equipment, most of which is of pre-1985 manufacture, that the cost of bringing each of these stations into compliance with the notification requirement would be roughly $2,000 per station, and that STL equipment manufacturers would not be able to upgrade all of the equipment by July 1, 1990. Finally, SBE argues that while the broadcast industry will be adversely affected by strict adherence to the equipment notification requirement, it will not receive any benefit from it. Noting that licenses will still have the responsibility to prove at all times that their STL systems are functioning properly, SBE requests that the Commission suspend the STL equipment notification requirement for three additional years.

3. On December 19, 1989, the Commission received a similar request from National Public Radio ("NPR") for an indefinite "grandfathering" of STL equipment or, at a minimum, a three year delay in the effective date of the equipment notification requirement. NPR provides limited statistics suggesting that roughly 70% of public radio stations use STL links and that there may be an average of 1.6 STL transmitters in use per station (many stations having backup equipment). NPR estimates the cost of bringing each station into compliance with the equipment notification requirement to be $4,573. This expense would need to be met largely from funds made available from NTIA's Public Telecommunciations Facilities Program and these funds will be inadequate unless equipment upgrade can be spaced over a three or four year period. Like SBE, NPR argues that because unforeseen developments in the broadcast marketplace have led to less congestion than was originally anticipated, giving these broadcasters the requested relief would not harm others. NPR also expresses the belief that the proper use of antenna systems, transmitter combiners and tuning procedures are more likely than the application of the Commission's equipment authorization program to avoid or correct any cases of interference which may develop. According to NPR, where such equipment causes interference, provisons in § 74.535(c) of the Commission's Rules will continue to require licensees to take whatever steps are necessary to correct the problem. Thus, because the economic hardship in complying with the notification requirement will be great, and because no significantly adverse consequences will result from the Commission's granting the requested relief, NPR requests a waiver of § 74.550, or in the alternative, a three year postponement in the effective date of the rule.

4. The arguments of SBE and NPR have been repeated in recent letters and telephone inquiries by both public and commercial broadcast licensees.

5. It appears that only recently did many broadcasters using STL/ICR equipment begin to investigate the costs associated with the upgrades required as a result of the equipment notification requirement, and that much of the current concern is due to their lack of planning. By the same token, the STL band congestion has not developed to the extent anticipated back in 1985. This

circumstance, more than any other, persuades us that a delay in the effective date of the equipment notification requirement in § 74.550 is not likely to have any significantly adverse impact on STL/ICR service. Nevertheless, we wish to emphasize that while we will grant the requested delay, all existing STL/ICR equipment must comply with the current technical standards and must be notified by July 1, 1993, if it is intended to be used after that date. Consequently, this delay should not be interpreted as modifying our intent to require licensees to use more spectrum efficient bandwidths in congested areas where there is a need to accommodate new STL/ICR service entrants. In sum, while the equipment notification requirement will be deferred, the other rules adopted in MM Docket No. 85–36, which are intended to foster more efficient use of the STL/ICR spectrum, are being retained and will continue in full effect.

6. Accordingly, pursuant to the authority contained in §§ 0.283 and 0.61 of the Commission's Rules, 47 CFR 0.283 and 0.61, the requirement contained in § 74.550 that operation of 944–952 MHz equipment not approved under the equipment authorization program may continue until July 1, 1990, after which such equipment must be approved, *is waived* until July 1, 1993.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

47 CFR part 74 is amended as follows:

PART 74—[AMENDED]

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. Sections 154 and 303.

2. Section 74.550 is amended by revising the first sentence to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment, except that operation of 944–952 MHZ equipment which has not been approved under the equipment authorization program may continue until July 1, 1993, after which equipment must be approved. * * *

[FR Doc. 90–1768 Filed 1–29–90; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY-90-002]

Egg Research and Promotion Order Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Egg Research and Promotion Order to exempt certain producers from the provisions of the Egg Research and Consumer Information Act. This proposal would also make conforming amendments to regulations. The changes are required by an amendment to the Egg Research and Consumer Information Act, which became effective December 12, 1989.

DATES: Comments must be received on or before February 9, 1990.

ADDRESSES: Written comments are to be mailed to Janice L. Lockard, Chief, Standardization Branch, Poultry Division, AMS, USDA, Room 3944-South, Post Office Box 96456, Washington, DC 20090-6456. Written comments received may be inspected in the Washington, DC, Standardization Branch office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, 202-447-3506.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action was reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be non-major because it does not meet the criteria contained theein. It will not result in an annual effect on the economy of $100 million or more or in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It also will not have a significant impact on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator of the Agricultural Marketing Service has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

This proposed action would eliminate all of the regulatory requirements of the Egg Research and Consumer Information Act (Act) on a major share of the egg producers currently subject to those requirements and who certify their eligibility for the statutory exemption and would substantially reduce the regulatory burden on handlers as well. This action would exempt an estimated 653 small egg producers who own 30,000 or fewer laying hens from requirements of the egg research and promotion program. These producers would no longer be required to pay the assessment of 5 cents per 30-dozen case of commerical eggs. The 653 producers represent approximately 36 percent of the total number of egg producers currently subject to assessments. In addition, an estimated 353 of these producers who also handle eggs of their own production would no longer be required to file monthly handler reports. Further, any other handler who handles eggs only from exempt flocks would no longer be required to file monthly handler reports or collect assessments.

Under the authority of the Act and the Egg Research and Promotion Order (Order), approximately 1,815 producers are paying assessmens to the AEB at the rate of 5 cents per 30-dozen case of commerical eggs marketed or the equivalent thereof. Currently exempted from the payment of assesments are producers whose aggregate number of laying hens does not exceed 3,000. Under the proposed amendment, those producers whose aggregate number of laying hens at any time during a 3 consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 30,000 hens are exempt from the provisions of the Act.

This would exempt at least 653 producers from the regulatory provisions of the Act and Order under conditions prescribed by the Secretary and would more closely reflect the declining share by these producers in total U.S. egg production. According to statistics of AFB, for example, income from assessments paid by these producers on their production represents only about 4 percent of the total $7.2 million collected annually.

There are an estimated 665 handlers under the program. Handlers who handle production other than their own would no longer be required to file reports or collect assessments on production from 30,000 or fewer laying hens.

There is no change in the exemption for any producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements that appear in part 1250 have been previously approved by the Office of Management and Budget under OMB Control No. 0581-0098. The proposed action should reduce, by approximately more than half, the number of collecting handlers who would be required to file any handler reports on a monthly basis. Currently, there are approximately 665 collecting handlers under the research and promotion program. It is estimated that 353 of these handlers would not be required to file monthly handler reports. In addition, those handlers who may handle some exempted production would not have to include the exempted production in their monthly handler reports. The 653 small egg producers who own 30,000 or fewer laying hens would be required to file, through their handlers, an annual certification of exemption.

Background

The Egg Research and Promotion Order in § 1250.347 (7 CFR 1250.347) currently provides that the following are to be exempt from paying assessments: "(a) Any egg producer whose aggregate number of laying hens at any time

during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 3,000 laying hens, and (b) any producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks." Section 12 of the Act (7 U.S.C. 2711) was amended effective December 12, 1989 (Pub. L. 101–220), to exempt certain producers from the provisions of the Act under such conditions and procedures as may be prescribed by the Secretary in the Order or rules and regulations issued thereunder.

Public Law 101–220 exempts those producers whose aggregate number of laying hens at any time during a 3-consecutive month period immediately prior to the date assessments are due and payable has not exceeded 30,000 laying hens. Also exempted is any producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

According to statistics of AEB, 653 producers owning 30,000 or fewer laying hens currently pay mandatory assessments at 5 cents per 30-dozen case of commercial eggs or the equivalent thereof, to finance research, promotion, and education activities. Although producers in this category represent 36 percent of the total producers covered by the Act, they represent only 4 percent of the total assessment income collected by AEB. Exempting producers owning 30,000 or fewer laying hens, therefore, would exempt a number of smaller producers without adversely impacting the capability of AEB to carry out the programs authorized under the Act.

The amendment to the Act further delineates the various commercial relationships existing in the egg production industry which are to be considered in identifying exempted producers. This includes recognition of individuals, partnerships, beneficial interests in corporations, beneficiaries of trusts, joint stock companies, associations, cooperatives, limited partnerships, or other similar entities.

Therefore, in order to carry out the provisions of the Act, it is proposed that a new § 1250.348 be added to the Order to delineate those producers who shall be exempt from the provisions of the Act in accordance with Public Law 101–220. This section would include a condition that those producers claiming such exemption certify their status in accordance with § 1250.530 of the regulations as proposed to be amended. Also, a conforming change is proposed to § 1250.202(a) of the procedure for the conduct of referenda, removing the reference to § 1250.347 and adding in its place § 1250.348.

Public Law 101–220 provides that the amendments to the Order shall be issued after public notice and opportunity for comment in accordance with 5 U.S.C. 553 and without regard to 5 U.S.C. 556 and 557 and shall not be subject to a referendum.

Interested persons are provided an opportunity to submit written views and comments on this proposal until February 9, 1990.

It has been determined that a 10-day comment period is appropriate in order to assure publication of a final rule to amend the Order effective March 1, 1990, as required by Public Law 101–220. All written comments timely received will be considered prior to a final determination on this matter.

List of Subjects in 7 CFR Part 1250

Egg research and promotion.

For reasons set forth in the preamble and under authority contained in the Egg Research and Consumer Information Act, as amended, it is proposed to amend title 7, CFR part 1250, as follows:

PART 1250—EGG RESEARCH AND PROMOTION

1. The authority citation for 7 CFR part 1250 continues to read as follows:

Authority: Pub. L. 93–428, 88 Stat. 1171, as amended; 7 U.S.C. 2701–2718.

§ 1250.202 [Amended]

2. Section 1250.202(a) is amended to remove the reference to § 1250.347 and add in its place "§ 1250.348."

3. Section 1250.347 is revised to read as follows:

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at the rate of 5 cents per 30-dozen case of eggs, or the equivalent thereof, or such lesser amount set by the Board and approved by the Secretary for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

§§ 1250.348—1250.353 [Redesignated as §§ 1250.349—1250.354]

4. Sections 1250.348 through 1250.353 are redesignated as §§ 1250.349 through 1250.354 and a new § 1250.348 is added to read as follows:

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period immediately prior to the date assessments are due and payable has not exceeded 30,000 laying hens. The aggregate number of laying hens owned by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity. Ownership of laying hens by an egg producer also shall include the following:

(1) In cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(2) In cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(3) In cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity. Stock or other beneficial interest in an entity that is held by the following shall be considered as held by the producer:

(i) Members of the producer's family described in paragraph (a)(1) of this section;

(ii) A general partnership or similar entity in which the producer is a partner or equity participant;

(iii) The partners or equity participants in an entity of the type described in paragraph (a)(3)(ii) of this section; or

(iv) A corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests.

(b) Any egg producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) In order to qualify for exemption from the provisions of the Act under this section, producers claiming such exemption must comply with § 1250.530 regarding certification of exempt producers and other such regulations as may be prescribed by the Secretary as a condition to exemption from the provisions of the Act under this section.

4. Section 1250.514 is revised to read as follows:

§ 1250.514 Levy of assessments.

An assessment of 5 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. Each case of commercial eggs shall be subject to assessment only once. Producers meeting the requirements of § 1250.348 are exempt from the provisions of the Act including this section.

5. Section 1250.530 is revised to read as follows:

§ 1250.530 Certification of exempt producers.

Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler within 10 days after the first sale of eggs to such handler after March 1, 1990, and annually thereafter on or before January 1 as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following:

(a) The name and address of the producer;

(b) Basis for producer exemption according to the requirements of § 1250.348; and

(c) The signature of the producer.

If the exempt producer becomes subject to the provisions of the Act pursuant to the requirements of § 1250.348, that producer shall notify, within 10 days, all handlers with whom he has filed a certificate of exemption.

Done at Washington, DC, on January 26, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-2172 Filed 1-29-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-01-AD]

Airworthiness Directives; Beech 33, 35, and 36 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Beech 33, 35, and 36 series airplanes which would require inspections of the rudder forward spar. There have been numerous reports of cracking of this structure. The actions specified in this proposed AD would prevent the rudder hinge brackets from separating from the rudder forward spar and the resultant loss of the rudder and control of the airplane.

DATE: Comments must be received on or before March 21, 1990.

ADDRESSES: Beech Service Bulletin No. 2333, dated October 1989, applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-01-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-01-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently aware of 8 reports of cracks at the hinge bracket attachments in the rudder forward spar on certain Beech 33, 35, and 36 series airplanes. On one airplane, the top rudder hinge bracket broke out a portion of the rudder spar web. The probable cause of the cracks in the spar is fatigue around the holes drilled to install nutplates. As a result, Beech has issued Service Bulletin Number 2333, dated October 1989, that specifices inspection procedures to detect cracks in the rudder forward spar and replacement provisions if cracks are found. New production airplanes incorporate a new design rudder assembly, Part Numbers 33-630000-137, -139, or -141, which are not subject to the problem addressed in this proposed AD. The new design rudder assembly will also be made available for field retrofit on existing airplanes.

Since the condition described is likely to exist or develop in other airplanes of the same design, the proposed AD would require compliance with Beech Service Bulletin No. 2333, dated October 1989, on certain Beech 33, 35, and 36 Series airplanes.

The FAA has determined there are approximately 5900 airplanes affected by the proposed AD. The cost of the inspection is proposed in the AD is estimated to be $80 per airplane. The total cost is estimated to be $472,000. The cost of this inspection will not have a significant economic impact on any small entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, The Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

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

Beech: Applies to the following airplanes certificated in any category:

Models	Serial Numbers
35-33, 35-A33, 35-B33, 35-C33, E33, F33, G33.	CD-1 through CD-1304
35-C33A, E33A, F33A	CE-1 through CE-1425
E33C, F33C	CJ-1 through CJ-179
36, A36	E-1 through E-2518
A36TC, B36TC	EA-1 through EA-500

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

To prevent the possible separation of the rudder and loss of control due to cracking of the forward spar, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, or upon accumulating 1000 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, inspect the rudder forward spar for cracks in accordance with Beech Service Bulletin Number 2333, dated October 1989.

(b) If cracks are found, prior to further flight replace the rudder forward spar Part Number 33-630000-115, -99, -113, or -17, as applicable, in accordance with the above Service Bulletin.

(c) If a new rudder forward spar is installed per paragraph (b) of this AD, inspect the rudder forward spar for cracks in accordance with the above Service Bulletin within the next 1000 hours TIS form the time of installation of the new rudder forward spar, and reinspect for cracks thereafter at 500 hours TIS intervals. If cracks are detected during any of these inspections, prior to further flight replace the rudder forward spar in accordance with the above Service Bulletin, and continue with the repetitive inspections described in this paragraph.

(d) The repetitive inspections required by this AD may be discontinued upon installation of a new rudder assembly, Part Number 33-630000-137, -139, -141, or -167, as applicable.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(f) An alternate method of compliance or adjustment of the initial or repetitive compliance times, which provides an equivalent level of safety may be approved by the Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; Telephone (316) 946-4400.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 19, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-2043 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-235-AD]

Airworthiness Directives; General Dynamics Models 340, 440, and C-131, B, C, D, E, F, and G (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which would require inspection for unacceptable drilled holes in certain fuselage frames, and repair, if necessary. This proposal is prompted by reports from operators who have found numerous holes drilled in the fuselage beltframes, the result of repeated removal and reinstallation of the cargo or passenger compartment interiors. Excessive holes in the fuselage frames could compromise the structural integrity of the airplane.

DATE: Comments must be received no later than March 22, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-235-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5234.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before

the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-235-AD". The post card will be date/time stamped and returned to the commenter.

Discussion: The FAA has received reports from operators of General Dynamics Model 340 and 440 series airplanes who have found numerous holes drilled in the fuselage beltframes. These holes are the result of repeated removal and replacement of the passenger and cargo compartment interior trim and lining. Excessive holes have a detrimental effect on the fatigue life of the frames. This condition, if not corrected, could compromise the structural integrity of the airplane.

The FAA has reviewed and approved General Dynamics, Convair Division Service Bulletin 640 (340D) 53-15, Revision 1, dated December 1, 1989, which describes procedures for visual inspections of the fuselage frames located above the floor line and in the lower cargo compartment to detect cracking in drilled holes or unacceptable drilled holes, and procedures for repair, if necessary, to restore the frames to serviceable condition.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections of the fuselage frames, and repair, if necessary, in accordance with the service bulletin previously described.

There are numerous General Dynamics (GD) (Convair) 340 and 440 series airplanes that have been modified by installation of turbopropeller engines in accordance with various supplemental type certifictes. Unofficial model numbers of the GD Models 340 and 440 have been adopted by the public to denote the particular engine installation, e.g., Model 640 denotes installation of Rolls Royce-Dart engines. This proposed rule would apply to all GD 340 and 440 airplanes, including those modified with turbopropeller engines.

There are approximately 500 General Dynamics Models 340, 440, and C-131 (Military) series airplanes in the worldwide fleet. It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,100,000.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

General Dynamics (Convair): Applies to Models 340, 440, and C-131, B, C, D, E, F, and G (Military) series airplanes, including all airplanes converted to turbopropeller power, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent progressive damage to the airframe, accomplish the following:

A. Within 1,000 hours time-in-service or 1 year after the effective date of this AD, whichever occurs first, conduct a visual inspection of the fuselage frames in accordance with General Dynamics, Convair Division, Service Bulletin 640 (340D) 53-15, Revision 1, dated December 1, 1989. Any drilled holes found which do not conform to the limitations specified in the service bulletin or any holes found which are cracked must be repaired prior to further flight, in accordance with the service bulletin.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on January 19, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-2044 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-36]

Proposed Designation of Transition Area—Albion, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to designate a 700-foot transition area at Albion, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Albion Municipal Airport, Albion, Nebraska, utilizing a nondirectional radio beacon (NDB) as a navigational aid. This proposed action would change the airport status from VFR to IFR.

DATES: Comments must be received on or before March 1, 1990.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to designate a 700-foot transition area at Albion, Nebraska. To enhance airport usage, a new instrument approach procedure is being developed for the Albion Municipal Airport, Albion, Nebraska, utilizing an NDB as a navigational aid. This navigational aid will offer new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Albion, Nebraska, at and above 700-foot above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations and controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR).

This action would change the airport status from VFR to IFR.

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Albion Municipal Airport, Nebraska [New]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Albion Municipal Airport (Lat. 41°43'51"N., Long. 98°03'23"W.); and within 3 miles each side of the 171° bearing, extending from the 5-mile radius 8 miles southeast of the airport.

Issued in Kansas City, Missouri on January 9, 1990.

William Behan,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 90-2045 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ASO-43]

Proposed Establishment of Transition Area, Pageland, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Pageland, SC, Transition Area. A standard instrument approach procedure (SIAP) has been developed to serve Runway 23 at the Pageland Airport predicated on the Pageland nondirectional radio beacon (NDB). This proposed action would lower the base of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. The additional controlled airspace is necessary to provide protection for instrument flight rules (IFR) aeronautical operations. If approved, concurrent with publication of the SIAP, the operating status of the

airport would change from visual flight rules (VFR) to IFR.

DATE: Comments must be received on or before: February 28, 1990.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-43, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-43." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Pageland, SC. An NDB SIAP has been developed to serve Runway 23 at the Pageland Airport. This action would lower the floor of controlled airspace from 1,200 feet to 700 feet above the surface in the vicinity of the airport. This additional controlled airspace is required for protection of IFR aeronautical operations. If approved, the operating status of the airport would be changed from VFR to IFR concurrent with publication of the SIAP. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

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

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

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Pageland, SC [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Pageland Airport (latitude 34°44'32"N, longitude 80°20'43"W); within three miles each side of the 036° bearing from the Pageland NDB (latitude 34°44'41"N, longitude 80°20'18"W), extending from the 5-mile radius area to 8.5 miles northeast of the NDB.

Issued in East Point, Georgia, on January 16, 1990.

Don Cass,

Acting Manager, Air Traffic Division.

[FR Doc. 90-2047 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-ACE-37]

Proposed Alteration of Transition Area—Charles City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Charles City, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure at the Charles City, Iowa, Muncipal Airport, utilizing the Charles City nondirectional radio beacon (NDB) as a navigational aid.

DATES: Comments must be received on or before March 1, 1990.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas, City, Missouri 64106, telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System

Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is take on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR part 71 to alter the 700-foot transition area at Charles City, Iowa. To enhance airport usage, the Charles City, Iowa, Municipal Airport is being provided with additional controlled airspace for aircraft executing a new instrument approach procedure utilizing the Charles City NDB as a navigation aid. The establishment of this new instrument approach procedure based on this approach aid entails alteration of the transition area at Charles City, Iowa, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR).

Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

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

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

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

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

2. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Charles City Municipal Airport, Iowa [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Charles City Municipal Airport (Lat. 43°04'38" N., Long. 92°36'38" W.); and within 1.75 miles each of the 305° bearing from the Charles City NDB extending from the 5-mile radius area of 6.5 miles northwest of the airport; and within 2.75 miles each side of the 104° bearing from the Charles City NDB extending from the 5-mile radius area to 8 miles southeast of the airport.

Issued in Kansas City, Missouri, on January 9, 1990.

Clarence E. Newbern,

Manager, Air Traffic Division Central Region.

[FR Doc. 90–2046 Filed 1–29–90; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Regulatory Flexibility Act; Review of Existing Rules

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of review of existing rules.

SUMMARY: In accordance with provisions of the Regulatory Flexibility Act, the Commission is reviewing four rules issued under provisions of the Poison Prevention Packaging Act. The Regulatory Flexibility Act requires the Commission and all other Federal agencies to review all rules which were in existence on January 1, 1981, and which have a significant economic impact on a substantial number of small entities, including small businesses. The purpose of this review is to determine whether the rules should be continued without change, or should be amended or revoked consistent with the objectives of the agency, in order to minimize any impact which they may have on small businesses. This review must be completd by December 31, 1990. The Commission has completed its review of rules issued under the Consumer Product Safety Act and the Flammable Fabrics Act. The Commission staff is preparing a report concerning its review of rules issued under the Federal Hazardous Substances Act. In this notice, the Commission solicits comments from all interested persons on four rules issued under the Poison Prevention Packaging Act.

DATE: Interested persons are invited to submit written comments on any of the rules described in this notice on or before April 2, 1990.

ADDRESSES: Comments and any accompanying material should be submitted to the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and captioned "Regulatory Flexibility Act Review of PPPA rules."

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Office of the General Counsel, Consumer Product

Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) became effective on January 1, 1981, and requires all Federal agencies, including the Commission, to evaluate and take into consideration the impact of their rules on small entities, including small businesses.

Section 610(a) of the RFA (5 U.S.C. 610(a)) requires the Commission to review all rules which were in existence on January 1, 1981, and which have or will have a significant economic impact on a substantial number of small businesses. This review of existing rules must be completed by December 31, 1990. Section 610(a) also requires the Commission to review any rule issued after January 1, 1981, within 10 years of its issuance on a final basis.

Section 610(b) of the RFA (5 U.S.C. 610(b)) specifies that in the review of existing rules, the Commission must consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and to the extent feasible, with state or local governmental rules; and

(5) The length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Review of Commission Rules

In the Federal Register of February 19, 1987 (52 FR 5079), the Commission published a notice to announce completion of its review of 17 rules issued under the Consumer Product Safety Act, and the availability of a report entitled "Regulatory Flexibility Act Review, Consumer Product Safety Act Rules." In the **Federal Register** of January 9, 1989 (54 FR 601), the Commission published a notice announcing completion of a review of eight rules issued under the Flammable Fabrics Act, and the availability of a report entitled "Regulatory Flexibility Act Review, Flammable Fabrics Act Rules." In each of those reports, the Commission expressed the conclusion that no further action with regard to any of the rules under consideration was warranted under provisions of the Regulatory Flexibility Act.

The Commission staff is preparing a report for consideration by the Commission of a review of nine rules issued under provisions of the Federal Hazardous Substances Act.

Review of PPPA Rules

In accordance with provisions of section 610 of the RFA (5 U.S.C. 610(c)), the Commission announces that during the next 12 months, it will be reviewing four rules issued under the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1471 *et seq.*) for any significant economic impact which may have on a substantial number of small businesses. As required by section 610(c) of the RFA, a brief description of each rule, the need for the rule, and its legal basis are set forth for each rule to be reviewed. All of these rules are published in subchapter E, chapter II of title 16 of the Code of Federal Regulations.

1. Part 1700—Poison Prevention Packaging. This rule contains definitions of terms used in the PPPA and regulations implementing that statute. It also restates the provisions of sections 3, 5, and 8 of the PPPA (15 U.S.C. 1472, 1474, and 1471n) relating to issuance of standards for child resistant packaging. Part 1700 sets forth requirements for labeling of household substances which are subject to requirements for child-resistant packaging but which are marketed in non-complying packaging in accordance with section 4 of the PPPA (15 U.S.C. 1473) in order to make those substances readily available to elderly or handicapped persons who are unable to use such substances in child-resistant packaging.

Part 1700 lists all household substances which are subject to requirements for child-resistant packaging, and those products which are exempted from requirements for such packaging. Part 1700 also sets forth requirements which child-resistant packaging must meet, and the protocol for testing child-resistant packaging.

Part 1700 was issued to protect children younger than five years old from serious personal injury or illness which might result from handling, using, or ingesting household substances. Part 1700 was issued under the authority of sections 3, 4, 5 and 8 of the PPPA.

2. Part 1701—Statements of Policy and Interpretation. Part 1701 contains two statements of policy and interpretation concerning provisions of the PPPA. The first concerns applicability of requirements for child-resistant packaging for prescription drugs dispensed by pharmacies. The second concerns the applicability of requirements for child-resistant packaging to household substances sold in larger containers. Both policy statements were issued to protect children younger than five years old from serious personal injury or illness which might result from handling, using, or ingesting household substances. The policy statements in part 1701 were issued under the authority of sections 2, 3, and 4 of the PPPA.

3. Part 1702—Petitions for Exemption from Poison Prevention Packaging Act Requirements; Petition Procedures and Requirements. Part 1702 specifies the procedures for petitioning the Commission to exempt a particular substance or category of substances from requirements for child-resistant packaging issued under the PPPA. This rule describes the justification needed for a petition for exemption from requirements for child-resistant packaging issued the PPPA, and the kinds of evidence which may be submitted to support a petition for exemption. This rule is used by firms which market products subject to requirements for child-resistant packaging to obtain exemptions from those requirements in cases where they are not necessary to protect young children from serious personal injury or illness from handling, using, or ingesting such products. Part 1702 was issued under provisions of sections 2, 3, and 5 of the PPPA.

4. Part 1704—Applications for Exemption from Preemption. Section 7 of the PPPA (15 U.S.C. 1476) provides that when requirements for child-resistant packaging of a household substances have been issued under provisions of the PPPA, no state or local government may issue or enforce any non-identical requirement for child-resistant packaging for that substance unless the Commission has issued a regulation to exempt the non-identical state or local requirement from preemption. Part 1704 sets forth procedures by which state and local governments may petition the Commission for exemption of non-identical state or local requirements for child-resistant packaging of a household substance from preemption by a requirement issued under the PPPA.

In the **Federal Register** of December 28, 1988 (53 FR 52428), the Commission proposed to revoke part 1704, and to issue a single rule governing applications for exemption from preemption of non-identical state or local requirements by rules issued under the Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act. The Commission staff is evaluating comments received in response to the notice of December 28, 1988. The Commission is expected to take final

action on the proposal during calendar year 1990.

Part 1704 is used by state and local governments seeking exemptions from preemption of their requirements for child-resistant packaging of household substances which are not identical to requirements for child-resistant packaging of the same substances issued under provisions of the PPPA. The Commission issued part 1704 under the authority of section 7 of the PPPA.

All interested persons are invited to submit written comments on any or all of the four rules issued under the PPPA and described in this notice. Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments must be received not later than April 2, 1990, to be considered in this rule review proceeding.

Dated: January 23, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-2073 Filed 1-29-90; 8:45 am]

BILLING CODE 6355-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3718-1]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: On December 27, 1989, (54 FR 53081), USEPA proposed to promulgate Federal revisions to the reasonably available control technology (RACT) rules for volatile organic compounds (VOC) contained in the Illinois State Implementation Plan (SIP) for ozone. These Federal revisions are intended to correct certain noted deficiencies in the existing Illinois RACT rules. A public hearing on this proposed promulgation was held on January 17, 1990

At the request of commentors at the public hearing, the public comment period on this proposed rulemaking is being extended until March 2, 1990.

DATE: Comments must be received on or before March 2, 1990.

ADDRESSES: Comments should be submitted to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604. (Please submit an original and three copies of comments if possible).

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, (312) 886-6036.

Dated: January 23, 1990.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 90-2069 Filed 1-29-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 85

[AMS FRL-3717-8]

Motor Vehicle Emissions Control System Performance Warranty Short Tests—Alternative Test Procedures

AGENCY: Environmental Protection Agency.

ACTION: Extension of comment period.

SUMMARY: On December 23, 1988, EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** concerning an alternative loaded-mode test procedure for inclusion in the Emission Control System Performance Warranty Short Tests of 40 CFR part 85, subpart W. On December 11, 1989 (54 FR 50776), the Agency reopened the comment period until January 10, 1990, for this rulemaking to allow an additional opportunity for interested parties to comment, or to supplement earlier comments. Based on a request from the Motor Vehicle Manufacturers Association (MVMA), EPA has decided to extend this public comment period for an additional 30 days.

DATE: Comments on the rulemaking action should be submitted to the Agency at the address given below on or before February 13, 1990.

ADDRESS: Materials relevant to the proposed loaded-test revision are contained in Public Docket No. A-88-32. The docket is located at the Environmental Protection Agency, Air Docket, Room M-1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. Interested persons may inspect the docket from 8:30 a.m. to noon and from 1:30 to 3:30 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Richard S. Wilcox, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668-4200.

SUPPLEMENTARY INFORMATION: The Loaded Test is one of several short test procedures, which EPA has promulgated, that are intended to be used by states to measure vehicular emissions as part of their inspection/maintenance (I/M) programs. Owners of 1981 and newest model year light-duty motor vehicles that fail an approved short test, may be eligible for certain emissions performance warranty coverage. The test procedures and performance warranty regulations are contained in 40 CFR part 85, subparts V and W.

On January 3, 1989, the State of Arizona began loaded-mode testing with somewhat different equipment and procedures than specified in the current Loaded Test requirement. Just prior to that date, EPA published a Notice of Proposed Rulemaking to revise the loaded-mode portion of the Loaded Test to accommodate Arizona's testing. (December 23, 1988, 53 FR 51956).

Since the proposal was originally published, the comment period has been extended on two occasions. On February 28, 1989, EPA extended the comment period for approximately 30 days in response to a request from MVMA for additional time (54 FR 8358). On December 11, 1989, the Agency reopened the comment period for 30 days to provide an opportunity for interested parties to comment on new test data from Arizona, as well as three new studies of that data (54 FR 50776).

Just before this last comment period ended on January 10, 1990, MVMA requested an additional 30-day extension.[1] The industry group stated that the extra time would allow MVMA members to provide "meaningful analysis and critique" of the studies referred to above.

A primary consideration in deciding whether to grant MVMA's request is warranty protection for vehicles failing the loaded-mode test. As stated in the original proposal, Arizona's test procedure is technically out of compliance with the performance warranty regulations. This created a situation where consumers were vulnerable to losing warranty coverage. Nonetheless, manufacturers appear to have continued providing warranty repairs in Arizona.

Due to the lack of any consumer protection crisis and EPA's desire to ensure full participation in this rulemaking, the Agency is granting MVMA's request by reopening the comment period until February 13, 1990. This additional time will also provide

[1] Letter to Richard Wilcox, U.S. EPA, from Gregory W. Walker, Motor Vehicle Manufacturers Association, dated January 4, 1990. See Public Docket A-88-32.

other interested parties an opportunity to comment, or to supplement earlier comments on the proposed loaded-mode test procedure. All information submitted during this additional comment period will be considered in any subsequent final rulemaking action.

Dated: January 23, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 90–2070 Filed 1–29–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS).

ACTION: Notice of receipt of request for rulmaking and request for information.

SUMMARY: NMFS has received a request from the American Petroleum Institute (API) for a small take of spotted and bottlenose dolphins incidental to removing oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico over the next 5 years. NMFS is requesting information, suggestions, and comments on whether it is appropriate to issue such regulations and the structure and content of any such regulations.

DATE: Comments on this request should be received no later than March 16, 1990.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the request may be obtained by writing to this address or from the information contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, NMFS, (301) 427–2323.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act (16 U.S.C. 1371 et seq) directs the Secretary of Commerce to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made.

This permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a "negligible impact" on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. On September 29, 1989, NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986 that allow a take of depleted as well as non-depleted marine mammals and also changed the conditions under which incidental takings are allowed.

Description of Request

On October 30, 1989, NMFS received the request from the API for an incidental take of bottlenose dolphins (*Stenella plagiodon*). API is representing operators who remove oil and gas drilling and production structures and related facilities in the Gulf of Mexico in State waters and Outer Continental Shelf waters adjacent to the coasts of Texas, Louisiana, Alabama, Mississippi, and Florida. The petitioner states that the United States is party to the 1958 Continental Shelf Convention which requires abandoned or unused installations to be entirely removed. Therefore, the Minerals Management Service, Department of the Interior, (MMS) which leases Outer Continental Shelf lands for oil and gas activities, also requires lessees to remove all structures after the lease is terminated.

Over the next five years, the petitioner estimates that 670 structures will be removed in the Gulf Mexico. Most of the structures are in water less than 100 feet deep. Over the next 35 years, it is estimated that about 5,500 structures will need to be removed. Some structures have already been removed using the methods described by the petitioners. The most frequently used procedure is to wash the soil out from inside the piling, lower an explosive charge to 15 feet below the mudline, and detonation of the charge which cuts the pile. Most wells are removed by using explosive devices.

Under section 7 of the Endangered Species Act, NMFS has consulted on the removal of over 125 oil & gas drilling and production structures and related facilities in the Gulf of Mexico. These consultations involved endangered and threatened sea turtles and required MMS to adhere to recommendations made by NMFS to avoid adverse impacts to the species. As an interim measure, NMS and the platform removal operators have been following these recommendations to also avoid taking dolphins. These included: the use of qualified observers; 30-minute aerial surveys within one hour before and after each blasting episode; if dolphins are observed within 1000 yards of the blast site the blast(s) will be delayed until attempts are successful in removing the animals at least 1000 yards from the site; detonation of explosives will occur no sooner than 1 hour following sunrise and no later than 1 hour prior to sunset; and charges are staggered 0.9 seconds to minimize the cumulative effects of the blasts. However, because these animals are under the authority of the Marine Mammal Protection Act (and are not threatened or endangered), the applicants must receive an authorization under the MMPA before a take is allowed.

Impacts to dolphins will come from exposure to sound and pressure waves associated with detonating the explosives. The sizes of the explosive charges are generally 50 pounds or less. The petitioners state that the radius of injury to dolphins is estimated at around 200 yards. The petitioners also state that the most likely form of incidental take, as a result of platform removals, is harassment from low level sound pressure waves. However, animals close enough to the detonation could be killed as a result of tissue destruction.

Information Requested

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of regulations to allow the taking. NMFS will consider this information in developing an environmental assessment, and if appropriate, proposed regulations allowing the taking of bottlenose and spotted dolphins incidental to removing oil and gas platforms and related structures in the Gulf of Mexico. If NMFS proposes regulations to allow this take, interested parties will be given ample opportunity to comment.

Dated: January 24, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries.

[FR Doc. 90–2036 Filed 1–30–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 20
Tuesday, January 30, 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 COMMERCE

International Trade Administration

[A-588-015]

Television Receivers, Monochrome and Color, from Japan; Preliminary Scope Ruling

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Preliminary scope ruling.

SUMMARY: On March 9, 1989, the Department of Commerce (the Department) received a request to exclude liquid crystal display (LCD) televisions of less than 6 inches in screen size from the antidumping finding on television receivers, monochrome and color, from Japan. We preliminarily determine not to exclude this merchandise from the scope of the finding. We invite comments from interested parties and from the public on this preliminary determination.

EFFECTIVE DATE: January 30, 1990.

FOR FURTHER INFORMATION CONTACT: J.E. Downey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4733/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1989, the Department received a request to exclude liquid crystal display (LCD) televisions under 6 inches in screen size from the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). The request was filed on behalf of Casio Computer Co., Ltd., Casio, Inc., Citizen Watch Co., Ltd., Hitachi Sales Corporation of America, Hitachi Sales Corporation of Hawaii, Inc., Matsushita Electric Corporation of America, NEC Home Electronics (U.S.A.), Inc., Seiko Epson Corporation, Toshiba Corporation, and Toshiba America, Inc. (the requesting parties).

We invited comments from interested parties on the scope exclusion request. We received comments from Zenith Electronics Corporation, a domestic party to the proceeding, opposing exclusion. We also received comments from Magnascreen and Ovonics Imaging, both manufacturers of LCD display units, and both opposing exclusion.

In addition, we received comments from Corning Inc., a manufacturer of specialty glass used in LCD display units. Corning expressed support for the exclusion of small-screen LCD TVs and requested, in accordance with section 751(b) of the Tariff Act, that the Department conduct a changed circumstances administrative review to determine whether "* * * circumstances have developed * * * which warrant the narrowing of the scope of [the finding] to exclude small screen LCD TVs."

Standing Determination

Corning, Magnascreen, and Ovonics Imaging are not interested parties within the meaning of section 771(9) of the Tariff Act and therefore do not have a standing to participate in this proceeding. These companies are not manufacturers in the United States of a like product. Consequently, we have not considered the comments submitted by these three firms in this preliminary ruling, nor have we considered Corning's request for a section 751(b) administrative review.

Preliminary Scope Ruling

On matters concerning the scope of an antidumping finding or order, our primary bases for determining whether a product is covered are the descriptions of the product contained in the order, the Department's and the International Trade Commission's (ITC) determinations, and the petition. When we cannot make a determination based on these documents, we use four additional criteria: The general physical characteristics of the product, the expectations of the ultimate purchaser, the ultimate use of the product, and the channels of trade in which the product moves.

In this case, it is unnecessary to address the four additional criteria because the descriptions in the determinations of the ITC and the Treasury Department (the pre-1980 administering authority), as well as subsequent Commerce and ITC determinations, are clear in defining the products covered by the finding.

In June 1979, the Treasury Department ruled that the finding applies to any unit which is generally capable of receiving a broadcast television signal and producing a video image. In all succeeding reviews of this finding conducted by Commerce, we have consistently applied this standard. See *e.g., Television Receivers, Monocrome and Color, from Japan; Notice of Final Results of Antidumping Administrative Review* (54 FR 35517. August 28, 1989).

The Department's prior scope rulings in this case have also consistently applied the same standard. Our rulings of June 24, 1985 and June 18, 1987 stated that an LCD TV of less than 3 inches in screen size and an LCD TV/radio combination unit are of the same class or kind of merchandise as that within the scope of the finding because they are "capable of both receiving a broadcast television signal and projecting a video image." In its 1987 determination, the ITC ruled that LCD TVs are the same like product as other television receivers. The ITC also determined that "other types of televisions are sufficiently similar to LCD TV's that the appropriate like product is all television receivers." International Trade Commission, Pub. No. 2042, *Liquid Crystal Display Television Receivers from Japan* (1987) at 1.

The requesting parties claim that hand-held LCD televisions with a screen size of 6 inches and under are later-developed merchandise, within the meaning of section 781(d) of the Omnibus Trade and Competitiveness Act of 1988, and that such TVs do not have the same physical characteristics, ultimate use, channels of trade, nor do they give rise to the same expectations of the ultimate purchaser, as the merchandise covered by the finding. However, these LCD televisions are not distinguishable from other merchandise covered by this finding since they are capable of receiving a broadcast signal and producing a video image. Therefore, we preliminarily determine that hand-held LCD televisions with a screen size

of 6 inches and under are within the scope of the finding. Since the scope definitions used by the Department and the ITC in prior determinations are clear, we do not need to address whether these products are later-developed merchandise within the meaning of section 781(d).

Public Comment

The scope exclusion request has attracted considerable interest from U.S. manufacturers that are not interested parties in this proceeding, within the meaning of section 771(9) of the Tariff Act. We are inviting comments from the public on this preliminary scope ruling. Although we will consider comments from the public in making a final scope ruling, our consideration of such comments does not give commentators status as interested parties unless such commentators come under the definition of "interested party," as provided for in section 771(9) of the Tariff Act.

Written comments must be submitted within 30 days of the date of publication of this notice. Comments should be addressed to the Assistant Secretary for Import Administration, Central Records Unit, room B-099, U.S. Department of Commerce, Washington, DC 20230. We will issue a final scope ruling after considering any such written comments.

Dated: January 23, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-2090 Filed 1-29-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-606]

Tubeless Steel Disc Wheels from Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration/ Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioner, Budd Company, and two manufacturers/exporters, FNV Veiculos E Equipamentos, S.A. and Borlem, S.A., Empreedimentos Industriais, the Department of Commerce ("the Department") has conducted an administrative review of the antidumping duty order on tubeless steel disc wheels from Brazil. On September 7, 1988, the Department amended its original order based on a remand by the Court of International Trade (53 FR 34566). The amended order eliminated FNV from the order, leaving only Borlem subject to review. Therefore, the review covers one manufacturer/exporter of this merchandise and the period December 19, 1986 through April 30, 1988.

As a result of the review, the Department has preliminarily found a dumping margin of 0.57 percent for Borlem. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: 377-8312/1130.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 1987, the Department published in the **Federal Register** (52 FR 19903) an antidumping duty order on tubeless steel disc wheels from Brazil. The petitioner and two manufacturers/ exporters requested, in accordance with § 353.22 of the Commerce Department's regulations (19 CFR 353.22), that we conduct an administrative review. We published a notice of initiation on June 29, 1988 (53 FR 24470).

On September 7, 1988, the Department amended its original order based on a remand by the Court of International Trade (53 FR 34566). The amended order eliminated FNV from the order, leaving only Borlem subject to review.

The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of tubeless steel disc wheels from Brazil designed to be mounted with pneumatic tires which have a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7, and 8 trucks, including tractors, and for use on semi-trailers and buses. During the review period, such merchandise was classifiable under item number 692.3230 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS item number 8716.9050. TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States and the period December 19, 1986 through April 30, 1988.

United States Price

In calculating United States price ("USP"), the Department used purchase price, as defined in section 772 of the Act, because the merchandise was sold to unrelated U.S. purchasers prior to importation. Purchase price was based on the packed, c.i.f. prices or packed c&f price to unrelated purchasers in the United States.

We made deductions, where appropriate, for foreign inland freight, foreign port charges, ocean freight, foreign exchange fees, and ocean insurance. We also added to USP the amount of Brazilian commodity taxes forgiven by reason of export of the merchandise to the United States. We calculated the adjustment by multiplying the FAS price of the merchandise sold in the United States by the effective rate of the Brazilian commodity tax and adding the result to USP. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act. Home market price was based on the packed, ex-factory price or packed delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight. We deducted home market packing costs and added U.S. packing costs. We made circumstance of sale adjustments for differences in credit expense, commissions, and commodity taxes.

In accordance with section 773(a)(4)(C) of the Act, we made adjustments to similar merchandise to account for differences in the physical characteristics where there were no identical products in home market with which to compare products sold in the United States. These adjustments were based on differences in the costs of production.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the weighted average margin for Borlem is 0.57 percent.

Interested parties may submit case briefs on these preliminary results within 30 days of the date of publication of this notice and may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication of this notice, or the first workday thereafter. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after submission of the case briefs. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins will be required for Borlem. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of this merchandise occurred after April 30, 1988, and which is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 0.57 percent shall be required. These deposit requirements are effective for all shipments of Brazilian tubeless steel disc wheels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: January 24, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-2090 Filed 1-29-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an amended export trade certificate of review, application No. 85-2A015.

SUMMARY: The Secretary of Commerce has issued an amended Export Trade Certificate of Review to the California Dried Fruit Export Trading Company ("CDFETC") on January 19, 1990. The original Certificate was issued on January 27, 1986 (51 FR 3996, January 31, 1986) and amended on December 22, 1987 (52 FR 49183, December 30, 1987).

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

CDFETC's Export Trade Certificate of Review has been amended to include the following changes:

1. The following company has been added as a "Member" of the Certificate: "Dole Dried Fruit and Nut Company."

2. Each of the following companies has been deleted as a "Member" of the Certificate: "Bonner Packing Company" and "California Prune Packing Company."

Pursuant to section 304(a)(2) of the ETC Act, 15 U.S.C. section 4014(a)(2), and 15 CFR 325.7, the amended Certificate is effective from October 23, 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 23, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-2092 Filed 1-29-90; 8:45 am]

BILLING CODE 3510-DR-M

Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Aluminum-Killed Cold-Rolled Steel Sheet.

Short-Supply Review Number: 3.

SUMMARY: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the Federal Register on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations"), the Secretary of Commerce ("Secretary") hereby announces that a short-supply determination is under review with respect to certian aluminum-killed ("AK") cold-rolled steel sheet. On January 25, 1990, the Secretary received an adequate short-supply petition from Buckbee Mears Cortland, Inc., ("MBC") for 3,000 metric tons of this product under article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. The Secretary, on the basis of available information, finds that this product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Regulations, the Secretary will apply a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice providing that they can and will produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-deliver period, the Secretary will issue a short-supply allowance not later than February 9, 1990.

Comments: Interested parties wishing to comment on this review must send written comments not later than February 6, 1990 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any

submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments conerning this review must reference the above-noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennyslvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Act and § 357.104(b) of Commerce's Short-Supply Regulations, the Secretary hereby announces that a short-supply determination is under review with respect to certain AK cold-rolled steeel sheel used in the manufacture of aperture or shadow masks, a fundamental component of color television picture tubes, and data display tubes. On January 25, 1990, the Secretary received a short-supply petition from BMC for 3,000 metric tons of this product under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, and for 4,000 metric tons of this product from Japan. Due to the statutory and regulatory requirements for the authorization of a short-supply allowance, the Secretary will only consider BMC's request as it relates to the U.S.-EC steel agreement. Pursuant to section 4(b)(1)(A) of the Act, and § 357.102(a)(1) of Commerce's Short-Supply Regulations, the Secretary cannot authorize a short-supply allowance unless there is a short-supply provision in a bilateral arrangement with the particular country from which the petitioner wishes to obtain its supply. Insofar as no bilateral steel agreement exists between the United States of America and Japan, the Secretary as a matter of law is precluded from considering BMC's request for the subject product from Japan at this time. However, if the agreement between the U.S. and Japan is signed in the near future, the Secretary will utilize the information obtained in this current review in order to consider the request for the additional 4,000 metric tons.

The requested product meets the following specifications:

Chemistry (in maximum values): Carbon (0.004 percent); Silicon (0.040 percent); Sulphur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); Copper (0.080 percent); and Phosphorus (0.035 percent);

Width range (and tolerance); 15 in. to 30 in. (± 0.04 in.);

Thickness range (and tolerance): 0.01 in. to 0.0102 in. (± 0.0003 in.);

Coil weight: 1.5 to 3.0 metric tons.

Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity of the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that the requested steel product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357.106(b)(1)(iii) of Commerce's Short-Supply Regulations, the Secretary is applying a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice indicating that they can and will supply this product within the requested period of time, provided it represents a normal order-to-deliver period, the Secretary will issue a short-supply allowance not later than February 9, 1990.

Dated: January 26, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–2228 Filed 1–29–90; 8:45 am]

BILLING CODE 3510–DS–M

Hot-Rolled Carbon Steel

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; hot-rolled carbon steel special sections under 3 inches in cross-sectional dimension.

SHORT-SUPPLY REVIEW NUMBER: 2.

SUMMARY: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Pub. L. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short Supply Regulations"), the Secretary of Commerce ("Secretary") hereby announces that a short-supply determination is under review with respect to hot-rolled special sections for use in the manufacture of window frames. On January 18, 1990, the Secretary received an adequate petition from Hope's Architectural Products requesting a short-supply allowance for this product. In accordance with section 4(b)(4)(B)(ii) of the Act, and § 357.106(b)(2) of Commerce's Short Supply Regulations, the Secretary will determine whether this product is in short supply not later than February 16, 1990. Comments on this review are welcome, and, if received in a timely manner, will be considered in making this determination.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than February 7, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after February 7, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than

officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377–0159.

SUPPLEMENTAL INFORMATION: Pursuant to section 4(b)(3)(B) of the Act and § 357.104(b) of Commerce's Short Supply Regulations, the Secretary hereby announces that a short-supply determination is under review with respect to certain hot-rolled carbon steel special sections. On January 18, 1990, the Secretary received an adequate short-supply petition from Hope's Architectural Products under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 100 net tons of custom-rolled 1000M4 sections (i.e., small bar shapes) to be delivered during the first half of 1990. These sections are of mild steel and have a cross-sectional profile of a "T" on a pedestal. The top of the "T" is to measure 2.1888 inches across and the pedestal 0.688 inches across. The overall depth of the section must be 1.312 inches. The weight of the sections should be 2.1428 pounds per foot of length.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short Supply Regulations require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than February 16, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–2093 Filed 1–29–90; 8:45 am]

BILLING CODE 3510–DS–M

Patent and Trademark Office

Trademark Affairs Public Advisory Committee; Meeting

AGENCY: Patent and Trademark Office.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATE: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on February 27, 1990.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, room CPK2–910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 557–7464.

Jeffrey M. Samuels,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 90–2094 Filed 1–29–90; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Export Visa Arrangement and Certification Requirements for Certain Cotton Textile Products Produced or Manufactured in Guatemala

January 24, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs establishing export visa and certification requirements.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

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

Under the terms of the Memorandum of Understanding dated November 9, 1989, the Governments of the United States and Guatemala established an export visa arrangement and certification system for cotton pants, shorts and breeches in Categories 347/348, produced or manufactured in Guatemala and exported on and after March 1, 1990.

A notice published in the **Federal Register** on November 30, 1989 (54 FR 49332) announced the establishment of guaranteed access levels (GALs) for goods in Categories 347/348 for the period beginning March 1, 1990 and extending through December 31, 1990. On January 1, 1990 U.S. Customs started signing the first section of form ITA–370P for goods to be re-exported from Guatemala to the United States during the period March 1, 1990 through December 31, 1990.

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).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

Interested persons are advised to take all necessary steps to ensure that textile products, produced or manufactured in Guatemala, which are to be entered into the United States for consumption, or withdrawn from warehouse for consumption, that are exported from Guatemala on and after March 1, 1990, will meet the stated visa and certification requirements.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

January 24, 1990.

Commissioner of Customs
Department of the Treasury
Washington, DC 20229

Dear Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated November 9, 1989 between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended and the Special Access Program set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to prohibit, effective on March 1, 1990, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Guatemala and exported on and after March 1, 1990 for which the Government of Guatemala has not issued an appropriate visa or certification fully described below.

Each shipment of apparel assembled in Guatemala wholly from components cut in the United States from U.S.-formed fabric and which falls under HTS number 9802.00.8010 which is subject to a Guaranteed Access Level (GAL) must be accompanied by a certification issued by the appropriate Guatemalan authorities and a completed Export Declaration (form ITA–370P).

Each shipment of woven apparel assembled in Guatemala wholly from components cut in the United States from U.S.-formed fabric and then subject in Guatemala to bleaching, acid-washing, stone-washing or permapressing following assembly, is subject to a GAL even though it may not be classified under HTS number 9802.00.8010, and shall be certified by the appropriate Guatemalan authorities.

Shipments of textile products not accompanied by a properly issued certification and an Export Declaration shall be accompanied by a properly issued visa.

The visa is a circular stamped marking in blue ink which will appear on the front of the original commercial invoice. The certification is a square-shaped stamped marking in blue ink on the front of the original commercial invoice. The original visa or certification shall not be stamped on duplicate copies of the invoice. The original of the invoice with an original visa or certification stamp shall be required to enter the shipment into the United States. Duplicates of the invoice or visa may not be used for this purpose.

The visa or certification stamp will include the following information:

1. The visa or certification number. The visa or certification number shall be the standard nine-digit/letter format beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the Code for Guatemala is "GT"). On the visa, the first two codes shall be followed by the number "1" and a five-digit numerical serial number identifying the shipment (e.g., OGT123456). On the certification, the first two codes shall be followed by the number "2" and a five-digit numerical serial number identifying the shipment (e.g., OGT123456).

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct merged category(s), quantity(s) and unit(s) of quantity provided for in the U.S. Department of Commerce correlation and in the Harmonized Tariff Schedule of the United States (e.g., "Cat. 347/378–510 DZ").

Entry of textile products subject to the certification system will be permitted only for those shipments accompanied by:

1. A valid certification by the Government of Guatemala.

2. A completed copy of the Shipper's Declaration (U.S. form ITA–370P) with a proper declaration by the Guatemala assembler that the articles were subject to assembly in Guatemala.

3. A proper importer's declaration.

Quantities must be stated in whole numbers. Decimals of fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa/certification or the correct merged category visa corresponding to the actual shipment. Rounding up or down to the nearest whole number shall be permitted. Quantities of less than a single unit shall not be construed to be zero.

U.S. Customs shall not permit entry if the shipment does not have a visa or certification, or if the visa or certification number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have crossed out or altered in any way. If the quantity indicated on the visa or certification is less than that of the shipment, entry shall not be permitted except if this results from rounding.

If the visa is not acceptable to the U.S. Customs Service, then the importer must obtain a new visa from the Guatemalan Government or a visa waiver and present it to the U.S. Custom Service before any part of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce upon written application by the Guatemalan Embassy in Washington, DC. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive any applicable quota requirement.

If U.S. Customs determines that the certification is invalid because of a minor error, such as a typographical error, and the remaining documentation fulfills requirements for entry under the Special Access Program, then a new certification or waiver must be obtained and presented to the U.S. Customs Service before any portion of the shipment will be released.

Any shipment which is declared for the Special Access Program but found not to qualify may be permanently denied entry into the United States.

If the visa is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visa or visa waiver.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Guatemala has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot, be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Any shipment which requires a visa or certification, but which is not accompanied by a valid and correct visa or certification in accordance with the foregoing provisions shall be denied entry by U.S. Customs Service unless the Government of Guatemala authorizes the entry and any charges to the agreement levels through the visa waiver process.

Visaed merchandise and products eligible for the Caribbean Basin Textile Special Access Program may not appear on the same invoice.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or certification for entry and shall not be charged to the agreement levels.

Facsimiles of the visa and certification stamps are enclosed with this letter.

The actions taken with respect to the Government of Guatemala with respect to imports of cotton textile products in Categories 347/348 have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register.**

Sincerely,

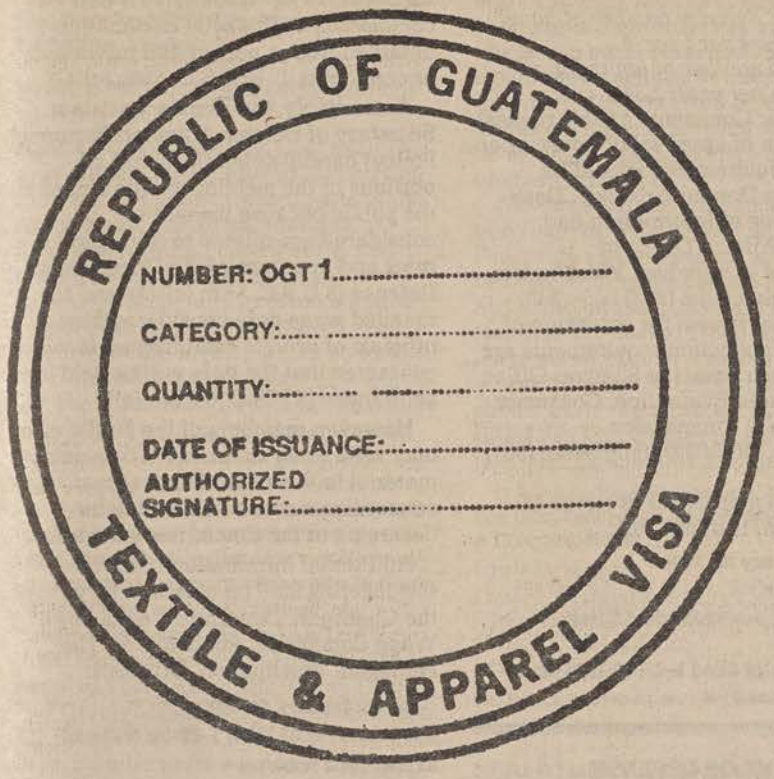
Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-M

S-041999 0006(00)(29-JAN-90-19:19:02)

FACSIMILE OF VISA STAMP



FACSIMILE OF CERTIFICATION STAMP

REPUBLIC OF GUATEMALA

NUMBER: OGT 2.....

CATEGORY:.....

QUANTITY:.....

DATE OF ISSUANCE:.....

AUTHORIZED SIGNATURE:.....

TEXTILE AND APPAREL VISA

[FR Doc. 90-2089 Filed 1-29-90; 8:45 am]
BILLING CODE 3510-DR-C

CONSUMER PRODUCT SAFETY COMMISSION

Request for Approval of a Collection of Information—Comprehensive Compliance Program

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through January 31, 1993, of a collection of information involved in the implementation of a comprehensive program to assess compliance by regulated industries with 70 rules enforced by the Commission. The rules enforced by the Commission establish health and safety requirements for products used by consumers in or around the household, in schools, in recreation, and other similar places and activities. These rules are codified in title 16 of the Code of Federal Regulations, chapter II, subchapters B through F. The comprehensive program will be conducted over a period of eight years and will include some activities which do not involve collections of information, such as observation of manufacturing and retail operations, inspection of records required to be maintained by rules subject to approval by the Office of Management and Budget under provisions of the Paperwork Reduction Act, and sample collections. The Commission will use the information obtained from the comprehensive program to focus enforcement activities on those industries where improvement of the level of compliance with rules enforced by the Commission will be likely to result in the greatest reduction of injuries associated with regulated products.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Regulated Product Comprehensive Plan.

Type of request: New plan.

Frequency of collection: Varies depending upon volume of products manufactured, imported, or sold by a firm; volume of records maintained; and complexity of day-to-day operations.

General description of respondents: Manufacturers, importers, and retailers of products subject to rules enforced by the Commission.

Estimated number of respondents per year: 424.

Estimated average number of hours per respondent per year: 6.

Estimated number of hours for all respondents per year: 2,544.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6416.

This is not a proposal to which 44 U.S.C. 3540(h) is applicable.

Dated: January 22, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90–2074 Filed 1–29–90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 6, 1990; Tuesday, March 13, 1990; Tuesday, March 20, 1990; and Tuesday, March 27, 1990 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: January 24, 1990.

[FR Doc. 90–2023 Filed 1–29–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

January 25, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Space Power Technology will meet on 13–14 February 90 from 8 a.m. to 5 p.m. at the Space Systems Division (SSD), Los Angeles AFB, CA.

The purpose of this meeting will be to review Air Force, DOE, SDIO, DARPA, NASA and related industry IR&D space power technology development efforts and to recommend the direction(s) of Air Force investment in this technology area. This meeting will involve discussions of classified defense matters listed in section 552b(b) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–2179 Filed 1–29–90; 8:45 am]

BILLING CODE 3910-01-M

Department of Army

Intent To Prepare Environmental Impact Statement (DEIS) For Cold Weather Training Exercise BRIM FROST In Alaska

AGENCY: Headquarters, Department of the Army, DOD.

SUMMARY: Cold weather joint exercise, code-named "BRIM FROST", involving Active and Reserve Components of the Army, Navy, Air Force, Marines, Reserves/National Guard units, and foreign military units has been conducted biennially in Alaska and is proposed to continue in 1990–91. The exercise would involve about 30 to 40 thousand military personnel and would use about 30 sites throughout Alaska for a variety of training missions. Ground exercises in remote sites generally would be by small units on foot and snow machines. Exercises on military lands would use heavier vehicles and would require site preparation by heavy equipment. Major activities would be on military land on Fort Wainwright, Tanana Flats, and the Yukon Training Area. Major support functions would be based at Fort Richardson/Camp Carroll, Fort Greely/Allen Army Airfield, Eilson Air Force Base, and Elmendorf Air Force Base. Smaller units would be deployed for various periods, usually 3 to 7 days, at and near military sites at the following locations:

Tatalina	King Salmon
Fort Yukon	Pedro Dome
Cape Romanzof	Amchitka
Murphy Dome	Sparrevhon
Adak	Cape Newenham
Indiana Mountain	Galena/Campion
Clear	Shemya

If permission is obtained from the owners or land managers, exercises involving more than 200 personnel would be conducted on nonmilitary lands vicinity of Dutch Harbor/Unalaska and at Cold Bay during a 10-day period. The Air Force would conduct supporting training and support missions, including low level flights. Most field activities would occur in late January and February. Biennial exercises after 1991 would employ similar numbers of personnel during the same timeframe. The action is required to maintain combat readiness of units with assigned and contingent roles in cold climates. Alternatives sites, equipment, operations planning, and mitigative measures will be considered in the EIS. The draft EIS is expected to be released in mid-1990.

Scoping: The Army will initiate a scoping process to discuss significant issues related to Exercise BRIM FROST. The EIS process will begin with announcements in local and regional newspapers and public radio. Individuals and private organizations will be invited to submit written statements regarding issues they would like to see addressed. Individuals and agencies responding to this Notice of Intent will be contacted regarding their issues of concern. Scoping meetings will be arranged and held anywhere there is interest or concern.

Meetings will be announced in local newspapers, public radio and/or the Federal Register. Persons with questions or comments may telephone Mr. Guy McConnel at (907) 753–2614 or may call (toll-free in Alaska) 1–800–478–2712 to leave an address or telephone number where they can be contacted. Callers should state their interest in Exercise BRIM FROST. Questions and comments may also be submitted by letter to:

U.S. Army Engineer District, Alaska, P.O. Box 898, Anchorage, Alaska 99506–0898, ATTN: EN–PL–ER.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I. L&E).

[FR Doc. 90–2061 Filed 1–29–90; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

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 Austria concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RDT/EU(AT)–20, for the transfer from Austria to KFA Julich, the Federal Republic of Germany of irradiated fuel spheres and compacts for post-irradiation examination and disposal. These spheres and compacts contain 12.498 grams of uranium enriched to 9.6 percent in the isotope uranium-235, 13.8825 grams of thorium, 0.0595 grams of uranium-233, and 0.120 grams of plutonium.

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.

For the Department of Energy.

Dated: January 22, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–2079 Filed 1–29–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3572–001]

North Strafford Equipment Corp.; Intent to Hold Public Meetings to Discuss the Draft Environmental Impact Statement for the Livermore Falls Hydroelectric Project

January 23, 1990.

The Commission staff has prepared a draft environmental impact statement (DEIS) for the proposed Livermore Falls Hydroelectric Project in Grafton County, New Hampshire. The major findings, conclusions, and recommendations of this DEIS will be discussed at two public meetings, both scheduled to be held on Thursday, March 15, 1990. Prior to this date, a copy of the DEIS will be mailed to all interested parties. This document will be discussed during the public meetings and subsequently revised to reflect any new information provided at the subject meetings.

The first public meeting will be held from 2:00 p.m. to 4:00 p.m., at the classroom in the State Armory, located at 7 Armory Road, Plymouth, New Hampshire, 03264–1510. The second meeting will be held from 7:00 p.m. to approximately 8:45 p.m., at the Plymouth Area High School cafeteria, located at Old Ward Bridge Road, Plymouth, New Hampshire, 03264.

Interested persons who are unable to attend the subject meetings may still provide written comments and recommendations for the public record. All correspondence regarding the subject DEIS should be filed with the Commission on or before March 16, 1990, and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. All correspondence should

clearly show the following caption on the first page: Livermore Falls Hydroelectric Project, New Hampshire, Docket No. 3572–001.

For further information, please contact the FERC EIS Coordinator, Jim Haimes at (202) 357–0780.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1989 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–528–000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

January 19, 1990.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP90–528–000]

Take notice that on January 16, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90–528–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Unifield Natural Gas Group, Limited Partnership (Unifield), a marketer, under ANR's certificate issued in Docket No. CP88–532–000 on July 25, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR requests authority to transport up to 30,000 Dt of natural gas per day on an interruptible basis for Unifield Natural Gas Group, Limited Partnership, pursuant to a transportation agreement dated August 24, 1989. ANR states that it would receive the gas on an interruptible basis for Unifield. ANR states that it would receive the gas at ANR's existing points of receipt located in the states of Louisiana, Oklahoma, Texas, and Kansas and the offshore Louisiana and Texas gathering areas and redeliver the gas for the account of Unifield at existing interconnections located in the State of Wisconsin. ANR indicates that the total volume of gas to be transported for Unifield on an average day would be 30,000 Dt and on an annual basis 10,950,000 Dt.

ANR states that it commenced service for Unifield on November 16, 1989, under §§ 284.223(a) as reported in Docket No. ST90–1030–000.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Algonquin Gas Transmission Co.

[Docket No. CP88–185–002]

Take notice that on December 29, 1989, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP88–185–002 an application pursuant to section 7(c) of the Natural Gas Act, requesting a certificate of public convenience and necessity, authorizing Applicant to render a firm transportation service commencing in 1990 and 1991 and to construct and operate facilities, which amended to the PennEast CDS Project,[1] all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that, in its original application filed on January 15, 1988, in Docket No. CP88–185–000, Applicant requested authority to render a firm transportation service up to 74,220 MMBtu per day for Boston Gas Company (Boston Gas); Central Hudson Gas & Electric Corporation (Central Hudson); Connecticut Natural Gas Corporation (Connecticut Natural); Fall River Gas Company (Fall River); Town of Middleborough, Massachusetts (Middleborough); The Southern Connecticut Gas Company (Southern Connecticut); and Yankee Gas Services Company (Yankee Gas) pursuant to a proposed Rate Schedule FTP, and to construct and operate facilities necessary to provide such transportation service. Applicant further states that proposed service involved transportation by Applicant of gas supplies purchased by the seven shippers from PennEast.

Applicant indicates that the following changes have occurred since Applicant's original filing in January 1988; (1) A change in the anticipated in-service date from November 1, 1989 to November 1, 1990 and November 1, 1991; (2) PennEast has assigned its precedent agreements to Texas Eastern as outlined in Texas Eastern's application in Docket No. CP88–180–002; (3) Connecticut Natural no longer desires to purchase quantities; and (4) phased service and facility requirements.

Applicant requests authorization to render a firm transportation service to the indicated shippers pursuant to Rate Schedule FTP. The following shippers have subscribed to the proposed FTP service by executing precedent agreements which provide for firm transportation service to commence on November 1, 1990 and November 1, 1991. The quantities received, fuel charge quantity and the maximum daily transportation quantity (MDTQ) to be rendered by the proposed transportation service are as follows:

[1] The PennEast Gas Services Company (PennEast) and Algonquin proposals, along with a companion filing by Texas Eastern Transmission Corporation (Texas Eastern) collectively became known as the PennEast CDS Project.

Shippers	Quantities in MMBtu per day scheduled to commence Nov. 1, 1990			
	Delivery points	Received by applicant	Fuel Charge @1.3%	MDTQ
Boston Gas	Malden, MA	29,492	383	29,109
	Everett, MA	0	0	0
		29,492	383	29,109
Central Hudson	Somers, NY	5,056	66	4,990
Yankee Gas	Bristol, CT	2,107	27	2,080
	Uncasville, CT	1,011	13	998
		3,118	40	3,076
Fall River	Fall River, MA	421	5	416
Middleborough	Middleborough, MA	337	4	333
Southern Connecticut	North Haven, CT	15,840	206	15,634
	Cheshire, CT	1,013	13	1,000
		16,853	219	16,634
Total		55,277	717	54,560

Shippers	Quantites in MMBtu per day scheduled to commence Nov. 1, 1991			
	Delivery points	Received by applicant	Fuel Charge @1.3%	MDTQ
Boston Gas	Malden, MA	29,492	383	29,109
	Everett, MA	10,132	132	10,000
		39,624	515	39,109
Central Hudson	Somers, NY	5,056	66	4,990
Yankee Gas	Bristol, CT	3,430	45	3,385
	Uncasville, CT	1,648	21	1,627
		5,078	66	5,012
Fall River	Fall River, MA	1,013	13	1,000
Middleborough	Middleborough, MA	337	4	333
Southern Connecticut	North Haven, CT	15,840	206	15,634
	Cheshire, CT	1,013	13	1,000
		16,853	219	16,634
Total		67,961	883	67,078

Applicant states that deliveries to Boston Gas would be through a new gate station at Malden, Massachusetts, and deliveries to Yankee Gas would be through a new gate station at Bristol, Connecticut, and deliveries to Southern Connecticut would be through a new gate station at Cheshire, Connecticut.

Applicant requests authorization to construct and operate the following facilities in order to render the proposed transportation service:

Phase I—Scheduled to Commence November 1, 1990

(1) 1.5 miles of 24-inch pipeline from Medford, Massachusetts to the proposed Malden, Massachusetts Meter Station;

(2) 3.1 miles of 16-inch pipeline loop of Applicant's C–1 System to the North Haven, Connecticut Meter Station;

(3) Retest 13.0 miles of J-System Pipeline from Waltham to Everett, Massachusetts;

(4) 12,600 horsepower compressor unit at Applicant's existing Southeast, New York compressor station; and

(5) meter station facilities at Malden, Massachusetts, Bristol, Connecticut and Cheshire, Connecticut, and modifications to the existing North Haven, Connecticut meter station.

Phase II—Scheduled to Commence November 1, 1991

(1) 12,600 horsepower compressor unit at Applicant's existing Stony Point, New York compressor station; and

(2) 5,500 horsepower compressor unit at Applicant's existing Burrillville, Rhode Island compressor station.

Applicant estimates the total cost of facilities to be $51,188,000.

Applicant states that the Cheshire meter station would allow for delivery of gas to Southern Connecticut to its Bridgeport division through the facilities of Tennessee Gas Pipeline Company (Tennessee) and would allow for measurement of gas received from Southern Connecticut through Tennessee's system to the North Haven section of its system.

Applicant indicates that the facilities proposed for Phase I are adequate to provide Phase I deliveries on all but peak delivery days. Applicant further indicates that, to provide peak-day service in the first year, Applicant would receive up to 20,000 MMBtu per day of its Rate Schedule CD–1 supply from Texas Eastern at a new alternate receipt point at Everett, Massachusetts.

Applicant proposes to render the transportation service pursuant to Rate Schedule FTP. Applicant proposes to recover its facilities costs through an FTP monthly demand charge of $13.626 per MMBtu. Applicant submits that quantities in excess of the MDTQ would be subject to an authorized overrun charge of $0.4480 per MMBtu.

Comment date: February 9, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Southern Natural Gas Co.

[Docket No. CP90–530–000]

Take notice that on January 16, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–530–000 a request pursuant to § 284.233 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to transport natural gas on an interruptible basis for Enron Gas Marketing, Inc. (Enron). Southern explains that service commenced November 16, 1989 under § 284.233(a) of the Commission's Regulations, as reported in Docket No. ST90–1071–000. Southern further explains that the peak day quantity would be 200,000 MMBtu, the average daily quantity would be 10,000 MMBtu and that the annual quantity would be 3,650,000 MMBtu. Southern explains that it would receive natural gas for the account of Enron at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for redelivery to various points in Louisiana. Southern states that no new facilities are required to implement the service.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP90–554–000]

Take notice that on January 17, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP90–554–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorizaton to provide an interruptible transportation service for Amerada Hess Corporation (Amerada Hess), a producer, under the blanket certificate issued in Docket No. CP88–820–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that pursuant to a transportation service agreement dated December 1, 1989, under its Rate Schedule IT, it proposes to transport up to 45,000 MMBtu per day equivalent of natural gas for Amerada Hess. AER states that it would transport the gas from a receipt point in Eugene Island Area Block 57, offshore Louisiana, and would deliver the gas to a delivery point

in Eugene Island Area Block 32, offshore Louisiana.

AER advises that service under § 284.223(a) commenced December 1, 1989, as reported in Docket No. ST90–1252–000. AER further advises that it would transport 45,000 MMBtu on an average day and 13,140,000 MMBtu annually.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Arkla Energy Resources a division of Arkla, Inc.

[Docket No. CP90–555–000]

Take notice that on January 17, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP90–555–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mid Con Marketing Corp. (Mid Con Marketing), a marketer, under the blanket certificate issued in Docket No. CP88–820–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that pursuant to a transportation service agreement dated December 1, 1989, under its Rate Schedule IT, it proposes to transport up to 45,000 MMBtu per day equivalent of natural gas for Mid Con Marketing. AER states that it would transport the gas from a receipt point in Eugene Island Area Block 57, offshore Louisiana, and would deliver the gas to a delivery point in Eugene Island Area Block 32, offshore Louisiana.

AER advises that service under § 284.223(a) commenced December 1, 1989, as reported in Docket No. ST90–1253–000. AER further advises that it would transport 45,000 MMBtu on an average day and 13,140,000 MMBtu annually.

Comment date: March 5, 1990, in accordance with Paragraph G at the end of this notice.

6. Northwest Pipeline Corp.

[Docket No. CP90–500–000]

Take notice that on January 10, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–500–000 a request pursuant to § 157.205 of the Commission's Regulations, for authorization to amend existing certificate authority to provide for additional liquefaction, storage service, vaporization, and delivery of storage volumes to Washington Natural Gas Company (Washington Natural) pursuant to a Service Agreement dated November 1, 1989 under Rate Schedule LS–1 of Northwest's FERC Gas Tariff Volume No. 1; all as more fully set forth in the application which is on file with the Commission and open to public transportation.

Northwest states that it is currently authorized by Commission Order issued January 31, 1978 in Docket Nos. CP75–286 and CP76–106 to provide storage service for Washington Natural at Northwest's Plymouth, Washington LNG plant.

It is said that Northwest and Washington Natural entered into an LS–1 Service Agreement dated November 1, 1989 providing for a storage capacity volume of 2,417,000 therms and a daily storage demand volume of 705,000 therms for an initial term expiring October 31, 2004.

Comment date: March 5, 1990, in accordance with Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corp.

[Docket No. CP90–545–000]

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP90–545–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Access Energy Corporation (Access), under Columbia's blanket certificate issued in Docket No. CP86–240–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to transport, on an interruptible basis, up to a maximum of 20,000 MMBtu equivalent of natural gas per day for Access received from various Appalachian meters on Columbia's pipeline system and redelivered to access at existing interconnects with Columbia's system. Columbia anticipates transporting, on a average day 16,000 MMBtu equivalent of natural gas and an annual volume of 7,300,000 MMBtu equivalent of natural gas.

Columbia states that the transportation of natural gas for Access Commended November 1, 1989, as reported in Docket No. ST90–942–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Columbia in Docket No. CP86–240–000.

Comment date: March 5, 1990, in accordance with Paragraph G at the end of this notice.

8. ANR Pipeline Co.

[Docket No. CP90–550–000]

Take notice that on January 17, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–550–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texas Eastern Gas Service Company (Texas Eastern), a marketer, under the blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation service agreement dated October 12, 1989, under its Rate Schedule ITS, it proposes to transport up to 30,000 dekatherms (dt) per day equivalent of natural gas for Texas Eastern. ANR states that it would transport the gas from receipt points in the states of Kansas, Louisiana, Oklahoma and Texas, and the offshore Louisiana and Texas gathering areas, and would redeliver the gas for the account of Texas Eastern at existing interconnections located in the state of Indiana.

ANR advises that service under § 284.223(a) commenced November 9, 1989, as reported in Docket No. ST90–966–000. ANR further advises that it would transport 30,000 dt on an average day and 10,950,000 dt annually.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gas Transmission Corp.

[Docket No. CP90–536–000]

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–536–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Atlas Energy Group, Inc. (Atlas Energy) under its blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

Columbia Gas states that the maximum daily, average daily and annual quantities that it would transport on behalf of Atlas Energy would be 7,000 MMBtu equivalent of natural gas, 5,600 MMBtu equivalent of natural gas and 2,555,000 MMBtu equivalent of natural gas, respectively.

Columbia Gas indicates that in Docket No. ST90–840–000 filed with the Commission, it reported that transportation service on behalf of Atlas Energy commenced on November 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gas Transmission Corp.

[Docket No. CP90–544–000]

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–544–000, a request pursuant to §§ 157.l205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport natural gas on an interruptible basis for Interstate Gas Marketing, Inc. (IGM). Columbia explains that service commenced November 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–852–000. Columbia further explains that the peak day quantity would be 51,350 MMBtu, the average daily quantity would be 41,080 MMBtu, and that the annual quantity would be 18,742,750 MMBtu. Columbia explains that it would receive natural gas for IGM's account at existing points of receipt on its system and would redeliver the gas to IGM at existing delivery points on its system.

Comment date: March 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1992 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2555, Maine]

Central Maine Power Co.; Intent to File an Application for Subsequent License

December 11, 1989.

Take notice that on December 30, 1988, Central Maine Power Company, the existing licensee for the Automatic Hydroelectric Project No. 2555, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2555 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (*See* Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, Room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2555 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Messalonskee Stream in Somerset and Kennebec Counties, Maine. The principal works of the Automatic Project include an 80.5-foot-long dam and a 30-foot-wide spillway section with flashboards; a 68-acre reservoir at elevation 94.3 feet m.s.l; a brick powerhouse with an installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at Edison Drive, Augusta, ME 04336.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1996 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2399, Vermont]

Central Vermont Public Service Corp.; Intent to File an Application for Subsequent License

December 11, 1989

Take notice that on December 29, 1988, Central Vermont Public Service Corporation, the existing licensee for the Arnold Falls Hydroelectric Project No. 2399, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2399 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2399 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Passumpsic River in Caledonia County, Vermont. The principal works of the Arnold Falls Project include an 18-foot-high, 255-foot-long rock-filled timber crib dam with two spillway sections topped by 18 inch flashboards; a reservoir of about 7.2 acres; a gated intake structure; a powerhouse with an installed capacity of 350 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1997 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2397, Vermont]

Central Vermont Public Service Corp.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 29, 1988, Central Vermont Public Service Corporation, the existing licensee for the Gage Hydroelectric Project No. 2397, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2397 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2397 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Passumpsic River in Caledonia County, Vermont. The principal works of the Gage Project include a concrete gravity dam and spillway topped by flashboards; a reservoir of about 15 acres; a headgate structure; a 90-foot-long intake canal; a powerhouse with an installed capacity of 700 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2000 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2489, Vermont]

Central Vermont Public Service Corp.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 29, 1988, Central Vermont Public Service Corporation, the existing licensee for the Cavendish Hydroelectric Project No. 2489, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2489 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2489 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Black River in Windsor County, Vermont. The principal works of the Cavendish Project include a 33-foot-high, 130-foot-long concrete dam with a spillway section; a reservoir of about 10 acres; a 7-foot-diameter, 180-foot-long tunnel; a 6-foot-diameter, 1,050-foot-long steel penstock with a surge tank; a powerhouse with an installed capacity of 1,440 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2001 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2490, Vermont]

Central Vermont Public Service Corp.; Intent to File an Application for Subsequent License

December 11, 1989.

Take notice that on December 29, 1988, Central Vermont Public Service Corporation, the existing licensee for the Taftsville Hydroelectric Project No. 2490, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2490 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capital Street, NE., Washington, DC 20426). The original license for Project No. 2490 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Ottaquechee River in Windsor County, Vermont. The principal works of the Taftsville Project include a 16-foot-high, 220-foot-long concrete dam with a spillway section topped by 18-inch flashboards; a reservoir of about 16.6 acres; a 36-foot-long concrete penstock; a powerhouse with an installed capacity of 500 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain informatioin described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2004 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2400, Vermont]

Central Vermont Public Service Corp.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 29, 1988, Central Vermont Public Service Corporation, the existing licensee for the Passumpsic Hydroelectric Project No. 2400, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2400 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2400 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Passumpsic River in Caledonia County, Vermont. The principal works of the Passumpsic Project include a 10-foot-high, 258-foot-long concrete gravity dam with two spillway sections topped by 12-inch flashboards; a reservoir of about 18.3 acres; an 87-foot-long canal; a powerhouse with an installed capacity of 700 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 77 Grove Street, Rutland, Vermont 05701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2005 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2350, Georgia]

Georgia Power Co.; Intent To File an Application for Subsequent License

December 20, 1989.

Take notice that on December 30, 1988, Georgia Power Company, the existing licensee for the Riverview Hydroelectric Project No. 2350, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2350 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2350 was issued effective March 1, 1959, and expires December 31, 1993.

The project is located on the Chattahoochee River in Harris County, Georgia and Chambers County, Alabama. The principal works of the Riverview Project include a 15-foot-high, 994-foot-long stone masonry diversion dam; a 200-foot-long lower stone masonry dam and 200 feet of abutments; a powerhouse with an installed capacity of 480 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 333 Piedmont Avenue, 18th Floor, Atlanta GA 30308.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this projec must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2013 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2341, Georgia]

Georgia Power Co.; Intent To File an Application for Subsequent License

December 20, 1989.

Take notice that on December 30, 1988, Georgia Power Company, the existing licensee for the Langdale Hydroelectric Project No. 2341, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. Although Project No. 2341 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2341 was issued effective March 1, 1959, and expires December 31, 1993.

The project is located on the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama. The principal works of the Langdale Project include a 15-foot-high rubble masonry dam having a 1,362-foot-long free-crest spillway and 530 feet of diversion walls and abutments; a powerhouse with an installed capacity of 1,040 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 333 Piedmont Avenue, 18th Floor, Atlanta, Georgia 30308.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license application must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2014 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2487, New York]

Hydro-Power, Inc.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on August 21, 1989, Hydro-Power, Inc., the existing licensee for the Hoosic Falls Hydroelectric Project No. 2487, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2487 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2487 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Hoosic River in Rensselaer County, New York. The principal works of the Hoosic Falls Project include a 30-foot-high, 220-foot-long concrete dam with a spillway section topped by flashboards; a reservoir of about 16.3 acres; a 75-foot-wide, 900-foot-long canal; a powerhouse with an installed capacity of 1,050 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 1502 N. 17th Avenue, Phoenix, AZ 85007.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2008 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2367, Maine]

Maine Public Service Co.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on November 16, 1988, Maine Public Service Company, the existing licensee for the Caribou Hydroelectric Project No. 2367, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2367 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2367 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Aroostook River in Aroostook County, Maine. The principal works of the Caribou Project include a 14-foot-high, 450-foot-long rock-filled timber crib dam with a concrete cap; a powerhouse of brick and concrete construction with an installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 209 State Street, Presque Isle, ME 04769.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2015 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2361, Minnesota]

Minnesota Power & Light Co.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on December 7, 1988, Minnesota Power & Light Company, the existing licensee for the Prairie River Hydroelectric Project No. 2361, filed an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2361 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2361 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Prairie River in Itasca County, Minnesota. The principal works of the Prairie River Project include a 17-foot-high, 946-foot-long concrete gravity dam with two spillway sections and sluices; a 10-foot-diameter, 450-foot-long reinforced concrete penstock with surge tank; a powerhouse with an installed capacity of 1,084 kw; a transmission line conection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 30 West Superior Street, Duluth, MN 55802.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2016 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2587, Wisconsin]

Northern States Power Co.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on July 17, 1989, Northern States Power Company, the existing licensee for the Superior Falls Hydroelectric Project No. 2587, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2587 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2587 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Montreal River in Iron County, Wisconsin and Gogebic County, Michigan. The principal works of the Superior Falls Project include a 28-foot-high, 240-foot-long concrete gravity dam; a reservoir of about 22 acres; a 7-foot-diameter, 1,697-foot-long reinforced concrete pipe conduit and a surge tank; two 54-inch-diameter steel penstocks; a powerhouse with an installed capacity of 1,320 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 100 N. Barstow Street, Eau Claire, WI 54702.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2002 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2444, Wisconsin]

Northern States Power Co.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on July 17, 1989, Northern States Power Company, the existing licensee for the White River Hydroelectric Project No. 2444, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2444 has a minor license with a waiver of section 15 of the Act, the requirements of Section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2444 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the White River in Ashland County, Wisconsin. The principal works of the White River Project include a 30-foot-high, 700-foot-long earthfill dam with a concrete spillway section; a reservoir of about 50 acres; a 7-foot-diameter, 1,300-foot-long reinforced concrete penstock; a powerhouse with an installed capacity of 1,000 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 100 N. Barstow Street, Eau Claire, WI 54702.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2006 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2417, Wisconsin]

Northern States Power Co.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on July 17, 1989, Northern States Power Company, the existing licensee for the Hayward Hydroelectric Project No. 2417, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. Although Project No. 2417 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87-33-000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2417 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Namekagon River in Sawyer County, Wisconsin. The principal works of the Hayward Project include a 20-foot-high, 300-foot-long rock-filled timber crib dam with a 122-foot-long spillway; a reservoir of about 247 acres; a powerhouse with an installed capacity of 168 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 100 N. Barstow Street, Eau Claire, WI 54702.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any completing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2007 Filed 1-29-90; 8:45 am]

BILL NG CODE 6717-01-M

[Project No. 2475, Wisconsin]

Northern States Power Co.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on July 17, 1989, Northern States Power Company, the existing licensee for the Thornapple Hydroelectric Project No. 2475, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. Although Project No. 2475 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87-33-000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2475 was issued effective November 1, 1949, and expires December 31, 1993.

The project is located on the Flambeau River in Rusk County, Wisconsin. The principal works of the Thornapple Project include a 522-foot-long rock-filled timber crib dam with a 365-foot-long spillway section topped by 22 Taintor gates; a reservoir of about 290 acres; a powerhouse with an installed capacity of 1,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 100 N. Barstow Street, Eau Claire, WI 54702.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2009 Filed 1-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-11-006]

Northwest Pipeline Corp.; Notice of Compliance Filing Pursuant to Order No. 497-A

January 18, 1990.

Take notice that on December 29, 1989, Northwest Pipeline Corporation (Northwest), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1-A:

Fourth Revised Sheet No. 423
Fourth Revised Sheet No. 423-A

Any person desiring to be heard or to protest the subject 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 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by February 2, 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 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. 90-1990 Filed 1-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2508, Connecticut]

City of Norwich Department of Public Utilities; Intent to File an Application for Subsequent License

December 20, 1989.

Take notice that on December 30, 1988, City of Norwich Department of Public Utilities, the existing licensee for the Tenth Street Hydroelectric Project No. 2508, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. Although Project No 2508 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) [see Docket No. RM87-33-000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch,

room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2508 was issued effective April 15, 1965, and expires December 31, 1993.

The project is located on the Shetucket River in New London County, Connecticut. The principal works of the Tenth Street Project include a 30-foot-wide, 15-foot-deep, 80-foot-long reinforced concrete flume; a powerhouse with an installed capacity of 1,400 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the license at 34 Court House Square, Norwich, CT 06360.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2011 Filed 1–20–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2441, Connecticut]

City of Norwich Department of Public Utilities; Intent To File an Application for Subsequent License

December 20, 1989.

Take notice that on December 30, 1989, City of Norwich Department of Public Utilities, the existing licensee for the Second Street Hydroelectric Project No. 2441, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. Although Project No. 2441 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2441 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Shetucket River in New London County, Connecticut. The principal works of the Second Street Project include a wood crib dam; a gatehouse; a 3,150-foot-long canal; a canal spillway; a powerhouse with an installed capacity of 800 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 34 Court House Square, Norwich, CT 06360.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2012 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2596, New York]

Rochester Gas and Electric Corp.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on December 30, 1988, Rochester Gas and Electric Corporation, the existing licensee for the Station 160 Hydroelectric Project No. 2596, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Pub. L. 99–495. Although Project No. 2596 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2596 was issued effective March 1, 1962, and expires December 31, 1993.

The project is located on the Genesee River in Livingston County, New York. The principal works of the Station 160 Project include a 30-foot-high, 334-foot-long stone masonry gravity dam; a reservoir at elevation 579.1 feet m.s.l.; a powerhouse with an installed capacity of 340 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 89 East Avenue, Rochester, New York 14649–0001.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2010 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89–8–001]

Seagull Interstate Corp.; Compliance Filing Pursuant to Order No. 497–A

January 18, 1990.

Take notice that on January 16, 1990, Seagull Interstate Corporation (Seagull), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497–A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 53
Third Revised Sheet No. 54A
First Revised Sheet No. 57B
First Revised Sheet No. 57C
First Revised Sheet No. 57D

Any person desiring to be heard or to protest the subject 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 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by February 2, 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 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. 90–1991 Filed 1–29–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-63-000 and CP89-197-000]

Southern Natural Gas Co.; Technical Conference on Engineering Issues

January 23, 1990.

Take notice that on February 1 and 2, 1990, members of the Engineering Staff of the Office of Pipeline and Producer Regulation will conduct a technical consultation concerning engineering issues relating to Southern Natural Gas Company's (Southern) filings in Docket Nos. CP89-63-000 and CP89-197-000. The FERC Engineering Staff requires Southern's technical assistance in developing a computer simulation model of its base system operations. This base system is required to allow the FERC Engineering Staff to make an independent determination of the need for facilities in each of the above proceedings. The staff requests that Southern supply a design engineer that can assist staff in the development of Southern's base system. In addition, if Southern has already developed a base system model that represents their base system operations it should be brought to this technical conference. This technical conference will commence at 9 a.m. at 825 North Capitol Street, NE., room 7400, Washington, DC 20426. The engineering conference and computer rooms may also be used for this consultation.

All parties to this proceeding, Commission staff, and interested members of the public qualified to discuss engineering issues are invited to attend; however, mere attendance at the consultation will not confer party status. The merits of each case will not be discussed. Any person wishing to become a party to these proceedings must file a late motion to intervene in accordance with Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d).

Further information concerning the technical conference may be obtained from Edward S. Klein, Division of Engineering, Market and Environmental Analysis, (202) 357-8873, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1988 Filed 1-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2445, Vermont]

Vermont Marble Co.; Intent To File an Application for Subsequent License

December 13, 1989.

Take notice that on December 12, 1988, Vermont Marble Company, the existing licensee for the Center Rutland Hydroelectric Project No. 2445, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. Although Project No. 2445 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87-33-000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2445 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on Otter Creek in Rutland County, Vermont. The principal works of the Center Rutland Project include a 12-foot-high stone masonry and concrete dam; a forebay; a 6-foot-diameter, 75-foot-long steel penstock; a powerhouse with an installed capacity of 275 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 61 Main Street, Proctor, Vermont 05765.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2017 Filed 1-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2347, Wisconsin]

Wisconsin Power & Light Co.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 27, 1988, Wisconsin Power & Light Company, the existing licensee for the Janesville Central Hydroelectric Project No. 2347, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99-495. Although Project No. 2347 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87-33-000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street NE., Washington, DC 20426). The original license for Project No. 2347 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Rock River in Rock County, Wisconsin. The principal works of the Janesville Central Project include a 342-foot-long overflow type timber and concrete dam with four slide gates and one slide sluice gate; a powerhouse with an installed capacity of 500 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 222 West Washington Avenue, Madison, WI 53701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1998 Filed 1-29-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2348, Wisconsin]

Wisconsin Power & Light Co.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 27, 1988, Wisconsin Power & Light Company, the existing licensee for the Blackhawk Hydroelectric Project No. 2348, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2348 has a minor license with a waiver of section 15 oif the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2348 was issued effective April 1, 1962, and expires December 31, 1993.

The project is located on the Rock River in Rock County, Wisconsin. The principal works of the Blackhawk Project include a 287-foot-long concrete dam with a non-overflow section, a Taintor gate section, a stoplog spillway section, a four-bay needle gate section, and a nine-bay slide gate section; a powerhouse with an installed capacity of 650 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 222 West Washington Avenue, Madison, Wisconsin 53701.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1999 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2476, Wisconsin]

Wisconsin Public Service Corp.; Intent To File an Application for Subsequent License

December 11, 1989.

Take notice that on December 15, 1988, Wisconsin Public Service Corporation, the existing licensee for the Jersey Hydroelectric Project No. 2476, filed a notice of intent to file an application for a subsequent license, pursuant to section 15(b)(1) of the Federal Power Act (Act), 16 U.S.C. 808, as amended by section 4 of the Electric Consumers Protection Act of 1986, Public Law 99–495. Although Project No. 2476 has a minor license with a waiver of section 15 of the Act, the requirements of section 15(b)(1) of the Act were made applicable to this proceeding by 18 CFR 16.19(b) (see Docket No. RM87–33–000, Order No. 513, Final Rule, issued May 17, 1989, a copy of which may be obtained from the Commission's Public Reference Branch, room 1000, 825 North Capitol Street, NE., Washington, DC 20426). The original license for Project No. 2476 was issued effective May 1, 1965, and expires December 31, 1993.

The project is located on the Tomahawk River in Lincoln County, Wisconsin. The principal works of the Jersey Project include a 15-foot-high, 801-foot-long dam with a concrete power house section, a concrete sluiceway and Taintor gate section and two earth embankments; a 709-acre reservoir at elevation 1,450.0 feet NGVD; a powerhouse with an installed capacity of 512 kW; a transmission line connection; and appurtenant facilities.

Pursuant to section 15(b)(2) of the Act, as made applicable to this proceeding by 18 CFR 16.19(c) (Order No. 513), the licensee is required to make available certain information described in 18 CFR 16.7 (as redesignated by Order No. 513). The above information is now available from the licensee at 700 North Adams Street, Green Bay, WI 54307–9002.

Pursuant to 18 CFR 16.20 (Order No. 513), each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 90–2003 Filed 1–29–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–68–NG]

Vermont Gas Systems, Inc.; Application to Amend Authorization to Import Natural Gas from Canada and Issuance of an Emergency Order Granting Interim Authority to Increase the Volume Being Imported

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Application to amend authorization to import Canadian natural gas and issuance of an emergency order granting interim authority to increase the volume being imported.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 21, 1989, of an application filed by Vermont Gas Systems, Inc. (Vermont Gas), to amend existing authority to import Canadian natural gas to increase the maximum daily import volumes from 32,000 to 36,000 Mcf per day for an interim period pending the completion and initial operation of a new propane gas air facility designed to meet winter peak day needs for its system. The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

The DOE also gives notice at this time of its decision on December 21, 1989, authorizing Vermont Gas to import the additional volumes on an emergency interim basis until the propane air facility is operational.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., March 1, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E–042, Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Vermont Gas is a local distribution company that receives its total supply of natural gas from Western Gas Marketing Limited, acting on behalf of TransCanada Pipelines Limited (TransCanada), under a gas purchase contract dated November 28, 1985, as further amended on September 29, 1989. The delivery point is at the international boundary near Highgate Springs, Vermont. Vermont Gas sells and distributes this gas entirely within the State of Vermont. Vermont Gas has no domestic natural gas supply sources and is not connected to any pipeline other than TransCanada.

In its emergency request, Vermont Gas indicated that in order to meet peak gas demand projected at 36,000 Mcf per day this winter, it had begun construction of a propane air facility in Colchester, Vermont. The propane facility has an initial capacity of 6,000 Mcf per day and was expected to be in service by December 18, 1989. Unusually cold weather, according to the applicant, slowed construction of the facility and consequently is expected to delay initial testing until January 1990. Vermont Gas maintained that until the propane air facility commenced service, it could not meet winter peak day demands, and therefore the interim emergency arrangements and authority were necessary to avoid supply disruptions. In its application, Vermont Gas stated that it had arranged for emergency service with WGML and Gaz Metropolitan to create an inventory of Canadian natural gas supplied by WGML to the Gaz Metropolitan system that Vermont Gas can call upon up to 4,000 Mcf per day on peak days until the propane facility is operational.

To avoid possible supply disruptions during the peak winter heating season, the DOE on December 21, 1989, granted Vermont Gas interim emergency authority to import an additional 4,000 Mcf per day "until its propane air facility becomes operational" (DOE/FE Opinion and Order No. 364 (Order 364). Order 364 modifies DOE/FE Opinion and Order No. 344 (Order 344), issued on October 26, 1989, which granted Vermont Gas emergency authority pending a final determination on its application to import up to 32,000 Mcf per day in firm deliveries from WGML from October 31, 1989 through October 31, 1992.

The DOE stated in Order 364 that while ordinarily the DOE would take no action until expiration of the notice and comment period, Vermont Gas' application states reasons sufficient to justify the need for an emergency increase in import volumes for a limited duration. DOE's immediate action protects the customers of Vermont Gas from exposure to possible supply disruptions in the face of a colder than normal winter.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving significant new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless it appears during the proceeding on this import application that the grant or denial of authorization will significantly affect the quality of the human environment, the DOE expects that no additional environmental review will be required.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motion to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protest, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is why an oral presentation is needed. Any request for an oral presentation should identify the substantial question or fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice in accordance with 10 CFR 590.316.

A copy of Vermont Gas' application is available for inspection and copying from the Office of Fuels Programs Docket Room, room 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on January 24, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–2080 Filed 1–29–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–61–NG]

Western Gas Processors, Ltd.; Order Granting Blanket Authorization To Import Natural Gas From and Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice

that it has issued an order granting Western Gas Processors, Ltd., blanket authorization to import up to 73 Bcf of Canadian natural gas and to export up to 73 Bcf of domestically produced gas to Canada under short-term, spot market arrangements for a term of two years beginning on the date of the first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 23, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–2081 Filed 1–29–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,179,461 in principal, plus accrued interest, in alleged crude oil violation amounts obtained by the DOE under the terms of a consent order entered into with Cibro Sales Corporation, Inc. (Case No. KEF–0136). The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for refund must be filed by March 31, 1991, and should be addressed to:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by March 31, 1991, and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows. Any claimant that has already filed a crude oil refund application need not file again.

Dated: January 22, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedure

January 22, 1990.

Name of Firm: Cibro Sales Corporation, Inc.

Date of Filing: June 19, 1989.

Case Number: KEF–0136.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for crude oil overcharge funds obtained from Cibro Sales Corporation, Inc. (Cibro). This firm remitted a total of $1,179,461 to the DOE, in accordance with Consent Order 6COX00289. An additional $251,692 in interest has accrued on that amount as of December 31, 1989. This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the monies received from Cibro, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court-approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to twenty percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. See Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of thirty days for the filing of any objections to the application of the MSRP, and solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants that wish to file refund applications for crude oil monies under the subpart V regulations. In that Notice, the OHA stated that all applicants for crude oil refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures, which the OHA has applied in numerous cases since the April 10 Notice, see e.g., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988), have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various states had filed a Motion with the Kansas District Court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings.

On August 17, 1987, Judge Theis issued an Opinion and Order denying the states' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumtions in affirmatively demonstrating injury entitling them to a refund." *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The states appealed the latter ruling, and the Temporary Emergency Court of Appeals affirmed Judge Theis' decision. *In re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On December 6, 1989, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the alleged crude oil violation amounts obtained from Cibro. The OHA tentatively concluded that the funds in that case should be distributed in accordance with the MSRP and the April 10, 1987 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty percent of the alleged crude oil violation amounts for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty percent of the funds would be distributed to the states and the federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claims reserve also would be divided between the states and the federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PD&O, the OHA proposed to require applicants for refunds to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by crude oil overcharges. The PD&O stated that end users of petroleum products whose businesses are unrelated to the petroleum industry could use a presumption tnat they absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10, 1987 Notice. Comments were solicited regarding the tentative distribution process set forth in the PD&O. The OHA has received no comments concerning the PD&O.

III. The Refund Procedures

A. Refund Claims

We have concluded that the alleged crude oil violation amount of $1,179,461 in principal, plus accrued interest, covered by this Decision, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted above, we will reserve initially the full twenty percent of the alleged crude oil violation amounts, or $235,892 in principal, plus accrued interest, for direct refunds to claimants, in order to insure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund.

Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. See *A. Tarricone Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on whether the specific end-user in question was injured, the applicant will be required to produce further evidence of injury. See *New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration*

denied 16 DOE ¶ 85,494, *aff'd sub nom. In re: The Department of Energy Stripper Well Exemption Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination ($1,179,461) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4. This yields a volumetric refund amount of $0.0000005836 per gallon.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. See *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application; that application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and endingwith *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). The deadline for filing an application for refund from the third pool of funds, pursuant to this proceeding, is March 31, 1991.* The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register**.

To apply for a crude oil refund, a claimant should submit an application for refund. That application should contain all of the following information:

(1) Identifying information including the applicant's name, address, and social security number or employer identification number, an indication whether the applicant is a corporation, the name and telephone number of a person to contact for any additional information, and the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and how it used petroleum products. If the applicant did business under more than one name, or a different name during the period of price controls, the applicant should list these names;

(3) If the applicant's firm is owned by another company, or owns other companies, a list of those other companies' names and their relationships to the applicant's firm;

(4) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973, through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons for all products purchased on which the applicant bases its claim;

(5) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(6) A statement that neither the applicant, its parent firm, affiliates, subsidiaries, successors nor assigns has waived any right it may have to receive a refund in these cases (i.e., by having executed and submitted a valid waiver pursuant to any one of the escrow accounts established pursuant to the Stripper Well Agreement);

(7) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass through the overcharges to its own customers); and

(8) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refunds received, and that it will pass on the entirety of its refunds to its customers.

All applications should be typed or printed and clearly labeled "Application for Crude Oil Refund." Each applicant must submit an original and one copy of the application, which should be mailed to the following address:

Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to the address listed above.

B. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $943,569 in principal, plus accrued interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $471,784.50 in principal, plus accrued interest, into an interest-bearing subaccount for the states, and one-half into an interest-bearing subaccount for the federal government. In accordance with previous practice, when the amount available for distribution to the states reaches $10 million, we will direct the DOE's Office of the Controller to make the appropriate disbursements to the individual states. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It is therefore ordered, that:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Cibro Sales Corporation, Inc. may now be filed.

(2) All applications submitted pursuant to paragraph (1) must be filed no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer, pursuant to paragraphs (4), (5), and (6) below, all of the funds from the subaccount denominated "Cibro Sales Corporation, Inc.," Account Number 6C0X00289Z.

(4) The Director of Special Accounts and Payroll shall transfer $471,784.50 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999DOE003W.

(5) The Director of Special Accounts and Payroll shall transfer the same amount of funds as that indicated in

* The PD&O issued December 6, 1989, set a tentative filing deadline of October 31, 1990. Because of the time that has elapsed since the PD&O was issued, OHA has decided to extend this deadline until March 31, 1991.

Paragraph (4) above, into the subaccount denominated "Crude Tracking-Federal," Number 999DOE002W.

(6) The Director of Special Accounts and Payroll shall transfer $235,892 in principal, plus accrued interest, of the funds obtained pursuant to Paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 3," Number 999DOE009Z.

Dated: January 22, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 90-2082 Filed 1-29-90; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,571,215.42, plus accrued interest, in alleged crude oil overcharge funds obtained from Bi-Petro, Inc., Case No. LEF-0001. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

DATES AND ADDRESSES: Applications for Refund submitted pursuant to this Decision must be filed in duplicate, postmarked no later than March 31, 1991, and should be addressed to the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Any party that has previously submitted a refund application in crude oil proceedings should not file another application; that application will be deemed filed in all crude oil proceedings as the procedures are finalized.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2390.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from Bi-Petro, Inc. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) (MSRP). Under the MSRP, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of crude oil and refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of crude oil price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

As the Decision and Order indicates, Applications for Refund may now be filed by injured purchasers of crude oil and refined petroleum products. Applications must be filed in duplicate and postmarked no later than March 31, 1991. The specific information required in an Application for Refund is set forth in the Decision and Order. As we state in the Decision, any party that has previously submitted a refund application in crude oil refund proceedings should not file another application; that application will be deemed filed in all crude oil proceedings as the procedures are finalized.

Dated: January 22, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

January 22, 1990.

Name of Firm: B-Petro, Inc.

Date of Filing: October 19, 1989.

Case Number: LEF-0001.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

On October 19, 1989, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Bi-Petro, Inc. (Bi-Petro) under the terms of a September 30, 1985 consent order with Bi-Petro. Bi-Petro remitted a total of $1,571,215.42 to the DOE. [1] This Decision and Order establishes procedures for distributing these funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations or ascertain the amount of the refund each person should receive. See *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have considered the ERA's request to implement subpart V procedures with respect to the funds received from Bi-Petro, and have determined that such procedures are appropriate.

I. Background

On July 28, 1986, as a result of a court-approved Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, the DOE issued a Modified Statement of Restitutionary Policy (MSRP) providing that crude oil overcharge revenues will be divided among the States, the Federal Government, and eligible purchasers of crude oil and refined products. 51 FR 27899 (August 4, 1986). Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the States and Federal Government for indirect restitution.

Shortly after the issuance of the MSRP, the OHA announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the

[1] The ERA's Petition for the Implementation of Special Refund Procedures states that as of October 4, 1989, the DOE had received a total of $1,360,607.07 from Bi-Petro. However, upon further analysis of this matter, the Consent Order Tracking System indicates that the DOE actually received a total amount of $1,571,215.42 from Bi-Petro. It appears that in calculating the total amount received from Bi-Petro, the ERA inadvertently omitted Bi-Petro's final payment of $210,608.25. Therefore, the total amount to be distributed is $1,571,215.42. *See* Record of Telephone Conversation dated January 8, 1990, contained in the case file. This error will be corrected in this Decision and Order.

appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 10, 1987, the OHA issued a Notice analyzing the numerous comments it received in response to the August 1986 Order. 52 FR 11737 (April 10 Notice). The April 10 Notice set forth generalized procedures and provided guidance to assist claimants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of price controls and prove that they were injured by the alleged overcharges. The April 10 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. Finally, the OHA stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would consist of crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the funds in the M.D.L. 378 escrow at the time of the settlement.

The DOE has applied these procedures in numerous cases since the April 10 Notice, see, *e.g., New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*New York Petroleum*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas. Various States had filed a Motion with that court, claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. On August 17, 1987, the court issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Settlement Agreement "does not bar OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318, 1323 (D. Kan. 1987). The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24. The States appealed the latter ruling, but the Temporary Emergency Court of Appeals affirmed the lower court's decision. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988).

II. The Proposed Decision and Order

On November 8, 1989, the OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the alleged crude oil violation amount obtained from Bi-Petro. 54 FR 47725 (November 16, 1989). The OHA tentatively concluded that the funds should be distributed in accordance with the MSRP and the April 10 Notice. Pursuant to the MSRP, the OHA proposed to reserve initially twenty (20) percent of the crude oil violation funds for direct restitution to applicants who claim that they were injured by the alleged crude oil violations. The remaining eighty (80) percent of the funds would be distributed to the states and federal government for indirect restitution. After all valid claims are paid, any remaining funds in the claim reserve also would be divided between the states and federal government. The federal government's share ultimately would be deposited into the general fund of the Treasury of the United States.

In the PDO, the OHA proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged crude oil overcharges. The PDO stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry are presumed to have absorbed the crude oil overcharges, and need not submit any further proof of injury to receive a refund. The OHA also proposed to calculate refunds on the basis of a volumetric refund amount, as described in the April 10 Notice. The PDO provided a period of 30 days from the date of publication in the Federal Register in which comments could be filed regarding the tentative distribution process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Bi-Petro settlement fund. Consequently, the procedures will be adopted as proposed.

III. The Refund Procedures

A. Refund Claims

The OHA has concluded that the $1,571,215.42 remitted by Bi-Petro, plus the interest which has accrued on that amount, should be distributed in accordance with the crude oil refund procedures previously discussed. As noted earlier, we have decided to reserve initially the full 20 percent of the alleged crude oil violation amount, or $314,243.08, plus interest, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons. The amount of the reserve may be adjusted downward later if circumstances warrant such action.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. See *MAPCO, Inc.*, 15 DOE ¶ 85,097 (1986); *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Following subpart V precedent, reasonable estimates of purchase volumes may be submitted. See *Greater Richmond Transit Co.*, 15 DOE ¶ 85,028 at 88,050 (1986). Generally, it is not necessary for applicants to identify their suppliers of pertroleum products in order to receive a refund. Applicants who were end-users of petroleum products whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased during the period of price controls. See *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987) (*Tarricone*). The end-user presumption of injury is rebuttable, however. *Berry Holding Co.*, 16 DOE ¶ 85,405 at 88,797 (1987). If an interested party submits evidence which is of sufficient weight to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. See *New York Petroleum*, 18 DOE at 88,701–03.

Reseller and retailer claimants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. See *Tarricone*, 15 DOE at 88,896. They can, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation. 6 Fed. Energy Guidelines ¶ 90,507. Applicants who executed and submitted a valid waiver pursuant to

one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Boise Cascade Corp.*, 16 DOE ¶ 85,214 at 88,411, *reconsideration denied*, 16 DOE ¶ 85,494, *aff'd sub nom. In Re: The Department of Energy Stripper Well Litigation*, 3 Fed. Energy Guidelines ¶ 26,613 (D. Kan. 1987).

Refunds to eligible claimants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil violation amount currently available ($1,571,215.42) by the total consumption of petroleum products in the United States during the period of price controls.[2] This yields a volumetric refund amount of $.00000078 per gallon ($1,571,215.42/2,020,997,335,000 gallons = $.00000078).

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for all crude oil overcharge funds. See *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund applicant in the crude oil refund proceedings should not file another application; that application will be deemed filed in all crude oil proceedings as the procedures are finalized. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *corrected*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *corrected*, 19 DOE ¶ 85,236 (1989). The deadline for filing an application for refund from the third pool of funds, pursuant to this proceeding, is March 31, 1991.[3] The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future.

Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the Federal Register.

To apply for a crude oil refund, a claimant should submit an Application for Refund. Although an applicant need not use any special application form to apply for a crude oil refund, a suggested form has been prepared by the OHA and may be obtained by sending a written request to:

Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Each crude oil refund application should contain the type of information specified by the OHA in past decisions. See, *e.g.*, *Texaco Inc.*, 19 DOE ¶ 85,200 at 88,374, *corrected*, 19 DOE ¶ 85,236 (1989); *Hood Goldsberry*, 18 DOE ¶ 85,902 at 89,477–78 (1989); *Wickett Refining Company*, 18 DOE ¶ 85,659 at 89,081–82 (1989).

B. Payments to the States and the Federal Government

Under the terms of the MSRP, the remaining 80 percent of the $1,571,215.42 involved in this Decision, or $1,256,972.34, plus interest, should be disbursed in equal shares to the states and federal government for indirect restitution. Accordingly, we will direct the DOE's Office of the Controller to segregate the $1,256,972.34, plus interest, available for disbursement to the states and federal government and transfer one-half of that amount, or $628,486.17, plus interest, into an interest-bearing subaccount for the states, and one-half, or $628,486.17, plus interest, to an interest bearing subaccount for the federal government. At an appropriate time in the future, we will issue a Decision and Order directing the DOE's Office of the Controller to make the appropriate disbursements to the individual states from their respective subaccount. Issuance of these orders at reasonable intervals rather than as each decision is issued is necessary to permit orderly tracking of the various disbursements to the states. Each individual state's percentage share of the funds is set forth in Exhibit H to the Settlement Agreement and is based on each state's consumption of petroleum products during the period of price controls. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered, That:

(1) Applications for Refund from the alleged crude oil overcharge funds remitted by Bi-Petro, Inc. may now be filed.

(2) All applications submitted pursuant to paragraph (1) above must be filed in duplicate and postmarked no later than March 31, 1991.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer $1,571,215.42 (plus interest) from the Bi-Petro, Inc. subaccount, Account Number 6C0X00251Z, pursuant to Paragraphs (4), (5), and (6) of this Decision.

(4) The Director of Special Accounts and Payroll shall transfer $628,486.17 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-States," Number 999D0E003W.

(5) The Director of Special Accounts and Payroll shall transfer $628,486.17 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Federal," Number 999D0E002W.

(6) The Director of Special Accounts and Payroll shall transfer $314,243.08 (plus interest) of the funds obtained pursuant to paragraph (3) above, into the subaccount denominated "Crude Tracking-Claimants 3," Number 999D0E009Z.

Dated: January 22, 1990.

Thomas I. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 90–2083 Filed 1–29–90; 8:45 am]

BILLING CODE 6450–01–M

[2] We will use the estimate that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 throuhg January 1981. *Mountain Fuel*, 14 DOE at 88,888 n.4 (1986).

[3] In the Bi-Petro PDO, the OHA set a tentative filing deadline of October 31, 1990. Because of the time that has elapsed since the PDO was issued, the OHA has decided to extend this deadline to March 31, 1991.

FEDERAL DEPOSIT INSURANCE CORPORATION

Extension of Time for Solicitation of Comments for Study With Respect to Directors' and Officers' Liability Insurance and Depository Institution Bonds Which Is Mandated by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Extension of time for solicitation of comments.

SUMMARY: The Federal Deposit Insurance Corporation caused to be published on December 29, 1989, a Notice in the Federal Register, Vol. 54, No. 249, p. 53719, which solicited comments on a study of directors' and officers' liability insurance and

depository institution bonds. The purpose of this notice is to extend the time to February 16, 1990, for submission of comments, suggestions and any relevant data from interested parties on the issues to be explored in the study.

DATE: Comments must be received by February 16, 1990.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street NW., Washington, DC 20429, or hand-delivered to Room 6099 at the same address, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: M. Lauck Walton, Counsel, FDIC, 550–17th Street NW., Washington, DC 20429, (202) 898–8697.

Dated at Washington, DC this 25th day of January, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–2144 Filed 1–29–90; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Robert S. Baker; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Robert S. Baker*, Sioux Falls, South Dakota; to acquire an additional 0.53 percent of the voting shares of Minnehaha Bancshares, Inc., Sioux Falls, South Dakota, for a total of 17.20 percent, and thereby indirectly acquire The First National Bank, Sioux Falls, South Dakota, and Farmers State Bank, Flandreau, South Dakota.

Board of Governors of the Federal Reserve System, January 24, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–2034 Filed 1–29–90; 8:45 am]

BILLING CODE 6210–01–M

Chemical Banking Corporation; New York, NY; Application To Engage de Novo in Providing Investment Advice, Solicitation, Execution and Clearance of Future Contracts, and Options on Futures Contracts, on Stock and Bond Indexes

Chemical Banking Corporation, New York, New York ("Applicant" or "Chemical"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through wholly-owned subsidiaries, Chemical Futures, Inc., New York, New York ("CFI") and Chemical Futures Management, Inc., New York, New York ("CFMI"), to engage *de novo* in providing certain investment advice and engaging in the solicitation, execution, and clearance on major commodity exchanges of various futures contracts and options thereon, through CFI as a futures commission merchant ("FCM"), and through either CFI or CFMI as a commodity trading advisor ("CTA") in providing investment advice regarding futures contracts and options thereon on certain indexes traded on major commodity exchanges and other financially-related indexes. These activities would be conducted on a nationwide and international basis.

Applicant proposes to engage *de novo* in the following activities:

(1) Through CFI as a FCM in the solicitation, execution and clearance on major commodity exchanges of certain stock index futures contracts (and options thereon) previously considered by the Board under certain circumstances;

(2) Through CFI as a FCM in the solicitation, execution and clearance of other financially-related index futures contracts (and options thereon) that are now or may be offered from time to time on major commodity exchanges, upon prior notice to and approval from the Federal Reserve Bank of New York ("FRBNY");

(3) Through CFI as a FCM in providing investment advice, including counsel, publications, written analyses and reports with respect to such specified stock index futures contracts (and options thereon) previously considered by the Board under certain circumstances and such other financially-related index futures contracts (and options thereon) approved from time to time by FRBNY;

(4) Through either CFI or CFMI as a CTA in providing investment advice, including counsel, publications, written analyses and reports, with respect to the purchase and sale of futures contracts and options on futures contracts on broad-based stock and bond indexes traded on major commodity exchanges and with respect to other financially-related index futures contracts (and options thereon) approved by FRBNY.

CFI and CFMI will also provide the proposed services to Chemical and other subsidiaries of Chemical as permissible servicing activities under § 225.22 of Regulation Y.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes that this proposed activity is "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the execution and clearance of the stock index futures contracts (and options thereon). See *BankAmerica Corporation*, 75 Federal Reserve Bulletin 78 (1989); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988); *Northern Trust Corporation*, 74 Federal Reserve Bulletin 333 (1988); *Saban, S.A.*, 73 Federal Reserve Bulletin 224 (1987); *The Chase Manhattan Corporation*, 72 Federal Reserve Bulletin 203 (1986); *Manufacturers Hanover Corporation*, 72 Federal Reserve Bulletin 144 (1986), *J.P. Morgan & Co., Incorporated*, 71 Federal Reserve Bulletin 251 (1985). Applicant has made the commitments set forth in § 225.25(b)(18) considered by the Board in previous Orders.

With respect to solicitation of stock index futures contracts (and options thereon), Applicant states that the authority to solicit customers conforms the activities with previous authorizations by the Board and the FRBNY for CFI to engage in futures and options on futures activities. See *Chemical New York Corporation*, 74 Federal Reserve Bulletin 393 (1988). Applicant commits to conduct its solicitation activities in accordance with applicable regulatory guidelines.

The Board has also previously approved the provision of investment advice as a FCM with respect to certain of the specified stock index futures contracts (and options thereon). See *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988); *Citicorp*, 73 Federal Reserve Bulletin 220 (1987); *Manufacturers Hanover Corporation*, 72 Federal Reserve Bulletin 144 (1986); *Bankers Trust New York Corporation*, 71 Federal Reserve Bulletin 111 (1985); *J.P. Morgan & Co., Incorporated*, 70 Federal Reserve Bulletin 780 (1984); *Manufacturers Hanover Corporation*, 70 Federal Reserve Bulletin 369 (1984).

Applicant relies on the Board's Order in *Northern Trust Corporation*, 74 Federal Reserve Bulletin 502 (1988), for authority to provide financial advisory services regarding all of the futures contracts (and options thereon) described in the application. In that Order the Board approved the provision of investment advice as a CTA registered with the Commodity Futures Trading Commission on futures contracts (and options thereon) on broad-based stock and bond indexes traded on major commodity exchanges. The Applicant states that the fact that the investment advisory activities in *Northern Trust* were conducted as a CTA, rather than a FCM, is irrelevant. Applicant believes that all basic regulatory protections afforded to a customer of a CTA are also afforded to a customer of an FCM, so that the Board is justified in relying on the regulatory scheme for FCM's to protect customers of CFI from any potential harm. Applicant has no current plans to register CFI as a CTA but would do so in the future if customers desire advisory services requiring such registration. CFI, in providing advice as an FCM, and CFI and CFMI, in providing advice as CTA's, will adhere to the conditions set forth in § 225.25(b)(19) of Regulation Y.

In addition, Application seeks authority to engage in solicitation, execution, clearance of other financially-related index futures contracts (and options thereon) that are now or may be offered from time to time on major commodity exchanges and provision of investment advice regarding such futures contracts (and options thereon) upon prior notice to and approval from the FRBNY.

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that they will promote competition and provide added convenience to customers of CFI and CFMI. Moreover, Applicant believes that the potential risks and conflicts from the provision of these services are no different from those arising in other applications approved by the Board.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 23, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, January 24, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-2018 Filed 1-29-90; 8:45 am]

BILLING CODE 6210-01-M

Cheshire Financial Corp., et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1990.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cheshire Financial Corporation*, Keene, New Hampshire; to acquire 100 percent of the voting shares of Village Savings Bank, Greenville, New Hampshire.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cardinal Bancshares, Inc.*, Lexington, Kentucky; to acquire 30.56 percent of the voting shares of Trans Kentucky Bancorp, Pikeville, Kentucky, and thereby indirectly acquire The Citizens Bank of Pikeville, Pikeville, Kentucky.

C. Federal Reserve Bank of Richmond (Fred L. Bagwell, Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Carolina Mountain Holding Company, Highlands, North Carolina, and thereby indirectly acquire Carolina Mountain Bank, Highlands, North Carolina.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstbank of Illinois Co.*, Springfield, Illinois; to acquire 100 percent of the voting shares of City Bancorp of Bloomington-Normal, Inc., Bloomington, Illinois, and thereby indirectly acquire City Bank of Bloomington-Normal, Bloomington, Illinois.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation, Inc.*, Lawton, Oklahoma; to retain control through an option of 1.0 percent of Fort Sill National Bank, Fort Sill, Oklahoma.

2. *Kaw Valley Bancshares, Inc.*, Kansas City, Kansas; to acquire Galleria Bank, Overland Park, Kansas.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 400 South Arkard Street, Dallas, Texas 75222:

1. *Del Rio National Bancshares, Inc.*, Del Rio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Del Rio National Bank, Del Rio, Texas.

2. *Globalshare, Limited*, Road Town, Tortola, British Virgin Islands; to become a bank holding company by

acquiring 61.5 percent of the voting shares of El Paso Financial Corporation, Wilmington, Delaware, and thereby indirectly acquire El Paso State Bank, El Paso, Texas.

G. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Mission-Valley Bancorp,* Pleasanton, California; to acquire 100 percent of the voting shares of Concord Commercial Bank, Concord, California.

Board of Governors of the Federal Reserve System, January 23, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-2035 Filed 1-29-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 881 0044]

Metro MLS, Inc.; 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 prohibit, among other things, a Virginia Beach, Va. real estate multiple listing service from forbidding or refusing publication of exclusive agency listings on its multiple listing service. However, respondent would be free to require designation of a listing as one granting an exclusive agency. Respondent would be required to furnish a copy of the Commission's order to each of its current and future members; to amend its by-laws, rules, and regulations to conform to the order; and to notify the Commission of certain corporate changes.

DATES: Comments must be received on or before April 2, 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: Paul Nolan, FTC/S-3115, Washington, DC 20580. (202) 326-2770.

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 to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Metro MLS, Inc., a corporation hereinafter sometimes referred to as "proposed respondent" or as "Metro," and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondent, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 2850 Ansol Lane, Virginia Beach, Virginia 23452.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public records of the proceeding 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 with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with 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 complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it 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.

7. Proposed respondent has read the proposed 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. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this order, the following definitions shall apply:

1. "Multiple listing service" shall mean a clearinghouse through which members' real estate brokerage firms exchange information on listings of real estate properties and shares sales

commissions with members who locate purchasers.

2. "Listing" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

3. "Exclusive agency listing" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct purchaser (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

I.

It is ordered, That respondent Metro MLS, Inc. ("Metro"), and its successors, assigns, officers, directors, committees, agents, representatives, or employees, directly, indirectly, or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from forbidding or refusing publication on Metro's multiple listing service of any exclusive agency listing, or restricting such publication in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by Metro's multiple listing service.

II.

It is further Ordered, That Metro shall:

(A) Within thirty (30) days after this order becomes final, furnish a copy of this order to each of its members.

(B) Within sixty (60) days after this order becomes final, amend, if and to the extent necessary to conform to the provisions of this order, its bylaws, rules and regulations, associated business forms, and any other of its documents that are made binding by Metro on its members, required or recommended by Metro for use by its members when transacting business with the public, or that are used by Metro itself in its business dealings with any third party or institution and shall make a copy of all conforming or conformed documents available to each of its members if it has not already done so.

(C) For a period of three (3) years after this order becomes final, furnish a copy of this order to each new member of Metro's multiple listing service, within thirty (30) days of his or her admission to membership.

(D) Within sixty (60) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which Metro has complied and is complying with this order.

(E) For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which Metro has complied with and is complying with this order.

(F) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Metro, such as dissolution, assignment, or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Metro that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Metro MLS, Inc. ("Metro"), which is located in Virginia Beach, Virginia. The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by maintaining a bylaw and engaging in practices that restricted competition among Metro members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that Metro and its members have engaged in acts and practices that have unreasonably restrained competition among residential real estate brokers doing business primarily in the Virginia Beach, Norfolk, and Great Bridge and Greenbriar Boroughs of Chesapeake, Virginia (the "Tidewater area"). The complaint alleges that Metro members have conspired through Metro to restrict the publication on Metro's multiple listing service of "exclusive agency contracts."

According to the complaint, Metro provides a multiple listing service for member real estate brokerage firms doing business in the Tidewater area. As described in the complaint, the multiple listing service is a clearinghouse through which real estate firms exchange information on "listings" (*e.g.,* brokerage service contracts) of residential real estate that is for sale and share commissions when other members locate purchasers. Metro charges a service fee to members for each property sold while the listing is published on the Metro multiple listing service.

According to the complaint, access to Metro's services provides a valuable competitive advantage to member firms, as it significantly reduces the costs of obtaining current comprehensive information on listings and sales. The Complaint states that Metro provides the only multiple listing service primarily serving the Tidewater area and that approximately eighty to ninety percent of real estate brokers in that area are Metro members. The complaint also states that for 1987, sales of Metro published listings amounted to approximately seventy-two percent of all residential property sales in the cities of Viriginia Beach and Norfolk and that sales of residential real estate listings published on Metro totaled approximately $1.6 billion in 1987.

As explained in the complaint, Metro until recently permitted members to publish only "exclusive right to sell" listings on its multiple listing service, *i.e.,* brokerage service contracts where the property owner agrees to pay a commission if the property is sold regardless of who locates the purchaser. Metro prohibited any member from publishing on the multiple listing service an "exlusive agency" listing. As described in the complaint, an "exclusive agency" listing is a brokerage service contract where the property owner agrees to pay a commission if the property is sold through a broker or a reduced commission or no commission if the owner locates the purchaser independent of any broker. The complaint challenges Metro's refusal to publish such listings on its multiple listing service.

The complaint alleges that the purposes or effects of the challenged act or practice have been to restrain competition unreasonable:

a. By restraining competition among brokerage firms based on willingness to offer or accept different contract terms that may be attractive and beneficial to consumers;

b. By limiting the ability of consumers to negotiate brokerage contract terms that may be more advantageous to them

than an exclusive right to sell listing; and

c. By limiting the ability of property sellers to compete against real estate brokers in locating purchasers.

The Proposed Consent Order

Part I of the order describes the conduct prohibited by the order. Part I prevents Metro from forbidding or refusing publication on Metro's multiple listing service of any exclusive agency listing, or restricting such publication in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms that are applicable to all listings accepted by Metro's multiple listing service for publication.

Part II of the order requires Metro to furnish a copy of the Commission's order to each of its current and future members; to amend its bylaws, rules and regulations, and business forms to conform to the order; to file compliance reports; and to notify the Commission of changes of Metro's corporate form that may affect compliance obligations arising out of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

This proposed consent order has been entered into for settlement purpose only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 90-1961 Filed 1-29-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory has failed to maintain these minimum standards to engage in urine drug testing for federal agencies. The certification of this laboratory under the Guidelines is suspended effective January 24, 1990:

Laboratory Specialists, Inc. 113 Jarrell Drive, Belle Chase, LA 70037, 504-392-7961.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 90-2222 Filed 1-29-90; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committee Meetings in February

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on January 11, 1990, Volume 55, No. 8, on page 1105 that the meetings of the Biological and Neurosciences Subcommittee and the Clinical and Behavioral Sciences Subcommittee of the Mental Health Small Grant Review Committee, NIMH, would be open on February 15, 9:00-10:00 a.m. The meetings will be open on February 14, 9:00-10:00 a.m. instead.

Dated: January 24, 1990.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-1976 Filed 1-29-90; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88N-0394]

Generic Animal Drug and Patent Term Restoration Act; Fourth Policy Letter; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a fourth policy letter, dated November 2, 1989, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. The letter contains policy statements prepared by the Center for Veterinary Medicine (CVM) regarding safety and effectiveness determinations for pioneer drugs that have been withdrawn from sale, approval of abbreviated applications for pre-1962 drugs, and approval of combination generic drugs for feed use. The agency is soliciting comments on the letter.

DATES: Written comments may be submitted at any time regarding this and previous policy letters and implementation of the Generic Animal Drug and Patent Term Restoration Act in general.

ADDRESSES: Submit written requests for single copies of the fourth policy letter to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy letter to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The policy letter and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Livingston, Center for Veterinary Medicine (HFV-100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100-670, 102 Stat. 3971). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension of certain animal drugs.

In the **Federal Register** of December 15, 1988 (53 FR 50460), FDA published a notice of availability of the November 23, 1988, policy letter, discussing the list of approved drugs that FDA must publish, patent certifications that generic applicants must make, patent information that pioneer sponsors must

submit, and exclusivity claims pioneer sponsors may make.

In the **Federal Register** of June 21, 1989 (54 FR 26111), FDA published a notice of availability of the June 7, 1989, policy letter concerning a document entitled "Generic Animal Drug and Patent Term Restoration Act—Implementation." The document includes a description of the proposed administrative procedures to be used in implementation of the new law, a draft of CVM's Manufacturing Requirements of abbreviated new animal drug applications (ANADA's), a draft bioequivalence guideline, and draft procedures for environmental review of generic animal drugs.

In the **Federal Register** of August 28, 1989 (54 FR 35534), FDA published a notice of availability of the August 2, 1989, letter containing policy statements concerning exclusivity of human food safety data submitted in a supplemental application, withdrawal period for generic drugs, substitution of an active ingredient in a combination drug or in a feed use combination, labeling requirements for generic drugs, exclusivity for a generic animal drug sponsor for an innovation approved under a supplement to an ANADA, and a pioneer drug sponsor's right to copy a generic innovation.

FDA is now announcing the availability of a fourth policy letter, dated November 2, 1989, which includes policy statements concerning safety and effectiveness determinations for pioneer drugs that have been withdrawn from sale, approval of abbreviated applications for pre-1962 drugs, and approval of combination generic drugs for feed use.

The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register**.

In addition, the subjects contained in these policy statements may be addressed in the regulations that wil implement the new law. Comments submitted in response to this notice will be considered in the drafting of the proposed regulations.

Dated: January 23, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-2064 Filed 1-29-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Funding Preference for Grants for Residency Training in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration (HRSA) announces the final funding preferences for Fiscal Year 1990 Grants for Residency Training in General Internal Medicine and General Pediatrics authorized under the authority of section 784, Title VII, of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988 (Title VI), Public Law 100-607.

Section 784 authorizes the award of grants for planning, developing and operating approved residency training programs which emphasize the training of residents for the practice of general internal medicine or general pediatrics. In addition, section 784 authorizes assistance in meeting the cost of supporting residents who are participants in any such program, and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Eligible applicants are accredited schools of medicine and osteopathic medicine, public and private nonprofit hospitals, or other public or private nonprofit entities.

To receive support, programs must meet the requirements of final regulations as specified in 42 CFR part 57, subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project adequately provides for the project requirements set forth in the regulations;

(2) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(3) The qualifications of the proposed staff and faculty; and

(4) The potential of the project to continue on a self-sustaining basis.

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to the following:

1. Projects which satisfactorily demonstrate a net increase in enrollment of underrepresented minorities in proportion to or exceeding their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in postgraduate year (PGY) trainees.

2. Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

3. Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

4. Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in Fiscal Year 1989 and the Administration is extending these priorities in Fiscal Year 1990.

An amendment to the regulations at 42 CFR 57.3105(a)(11) (formerly 57.3105(k)) was published on December 18, 1989, in the **Federal Register** at 54 FR 51744 which deletes the current project requirements for continuity of care experience which specifies the percentage of time a resident spends in serving patients in ambulatory care settings.

Final Funding Preference for Fiscal Year 1990

A proposed funding preference regarding continuity of care was published in the **Federal Register** of June 28, 1989 (54 FR 27211) for public comment. No comments were received during the 30 day comment period. This preference as proposed will be retained as follows:

To encourage a level of continuity training which more effectively meets the purposes of the grant program, a funding preference will be provided to any approved applicant who demonstrates continuity of care experiences that meet the following criteria:

(a) Comprise at least 10 percent of his or her total training time (excluding vaction time) during each year of the program (i.e., at least one-half day per week);

(b) Comprise at least 20 percent of his or her total training time (excluding vacation time) for the entire residency training period; and

(c) Be scheduled in at least nine months of each year of training.

This program is listed at 13.884 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: January 12, 1990.

John H. Kelso,

Acting Administrator.

[FR Doc. 90-2063 Filed 1-29-90; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-90-3006; FR 2747-N-01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1990, is 7¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1990, is 8⅛ percent.

FOR FURTHER INFORMATION CONTACT: L. Richard Keyser, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-1591 (this is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the Federal Register.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1990, is 8⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secreteary of HUD at 8⅛ percent for the six-month period beginning January 1, 1990. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first six months of 1990.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	January 1, 1980	July 1, 1980.
9⅞	July 1, 1980	January 1, 1981.
11¾	January 1, 1981	July 1, 1981.
12⅞	July 1, 1981	January 1, 1982.
12¾	January 1, 1982	January 1, 1983.
10¼	January 1, 1983	July 1, 1983.
10⅜	July 1, 1983	January 1, 1984.
11½	January 1, 1984	July 1, 1984.
13⅜	July 1, 1984	January 1, 1985.
11⅝	January 1, 1985	July 1, 1985.
11⅛	July 1, 1985	January 1, 1986.
10¼	January 1, 1986	July 1, 1986.
8¼	July 1, 1986	January 1, 1987.
8	January 1, 1987	July 1, 1987.
9	July 1, 1987	January 1, 1988.
9⅛	January 1, 1988	July 1, 1988.
9⅜	July 1, 1988	January 1, 1989.
9¼	January 1, 1989	July 1, 1989.
9	July 1, 1989	January 1, 1990.
8⅛	January 1, 1990	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1990, is 7¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1990.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

Authority: Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 22, 1990.

Peter Monroe,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-1994 Filed 1-29-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Alaska AA-67666]

Proposed Reinstatement of a Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-67666 has been received covering the following lands:

Kateel River Meridian, Alaska

T. 5 S., R. 15 E.,

Sec. 18.

(596 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from August 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-67666 as set out in section 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 terms and conditions cited above.

Dated: Jan 19, 1990.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-2075 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-00-4111-15; WYW107484]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 16, 1990.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW107484 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW107484 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

FR Doc. 90-2053 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-00-4111-15; WYW107486]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 16, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW107486 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lesssee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW107486 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-2054 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-00-4212-11; N-41567-11]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Las Vegas, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register.**

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 21, W½NE¼NE¼.
Aggregating 20 acres (gross).

The Clark County School District intends to use the land for a Jr. High School. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register.**

Dated: January 18, 1990.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 90-2035 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-HC-M

[UT-020-00-4212-14; U-65661]

Sale of Public Lands in Summit and Wasatch Counties, Utah; Realty Action

AGENCY: Bureau of Land Management, Salt Lake District, Interior.

ACTION: Notice of realty action; direct sale of public lands, U-65661.

SUMMARY: The following described land has been examined and identified as suitable for disposal under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750,

43 U.S.C. 1713), at not less than the appraised value shown:

Legal description	Acreage	Value
T. 2S., R. 4E, SLM: Section 22, Lots 32, 33, 34 ..... Section 27, Lots 23, 24, 25, 27	.25	$500.00

This land represents several tiny fractions of land remaining after many years of patenting mining claims. The land is needed for community expansion, is isolated from other public lands, and is not needed by any other federal agency.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to the Bald Eagle Homeowners Association. It has been determined that the subject parcels contain no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, BLM, 2370 South 2300 West, Salt Lake City, Utah 84119. Any adverse comments will be evaluated by the State Director who may vacate or modify this reality action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Deane H. Zeller,

District Manager.

[FR Doc. 90-2058 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-00-4212-11; U-65673]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Utah

The following public land in Salt Lake County, Utah has been found suitable for conveyance to Salt Lake City Corporation for a fire station. The lands are to be classified for conveyance under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.):

Salt Lake Meridian

T. 1 S., R. 1 E.,

Section 10, Parcel 9 of Tract D.

Containing 1.72 acres.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for a road granted to Salt Lake City Corporation and the University of Utah pursuant to Section 2477, U.S. Revised Statutes (43 U.S.C. 932), serialized U-11463.

5. Those rights for a ditch granted to the Mount Olivet Cemetery Association pursuant to the Act of February 15, 1901 (31 Stat. 790), serialized SL-012636.

6. Any other reservations that the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the mineral leasing laws.

Detailed information concerning this action is available for review at the Salt Lake District Office.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification or conveyance of the lands to: District Manager, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 90-2059 Filed 1-29-90; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-020-00-4212-14; U-64797]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, Bureau motion noncompetitive public land sale in Salt Lake County.

SUMMARY: The following described land has been determined to be suitable for disposal by direct sale under the provisions of Section 203 of the Federal Land and Policy Management Act (FLPMA) of 1976 (90 Stat. 2743, 43 USC 1701, 1713) at not less than the appraised value of $11,975.00. The land will be offered for sale after a 60 day waiting period from the publication of this notice.

T. 3S., R. 1E., SLM, Section 1: This parcel of land is formed by the unpatented lands of the Shaffer Lode Claim, mineral survey No. 3038 (closed) and the Jefferson Lode Claim, mineral survey No. 4340 (closed) which lies west of the north-south centerline of Section 1, T. 3S., R. 1E., SLM, Utah. Lot 14 of Section 1, and a fragment of public land formed by Shaffer Lode, mineral survey No. 3038 (closed), Jefferson Lode, mineral survey No. 4340 (closed), and Blue Jay Lode, mineral survey No. 4988, which was originally part of Lot 4 in Section 1.

Beginning at the intersect point of the north-south centerline of Section 1, T. 3S., R. 1E., SLM, Utah, and the north boundary of Shaffer Lode, mineral survey No. 3038 (closed).

Thence north on the north-south centerline of Section 1, 476.4 feet; thence south 18° 00′ west, 1017.5 feet; thence north 53° 34′ west, 632.4 feet; thence north 18° 00′ east, 317.2 feet; thence north 75° 37′ west, 105.9 feet; thence south 16° 40′ west, 547.0 feet; thence south 73° 30′ east, 711.6 feet; thence south 70° 41′ east, 26.4 feet; thence south 19° 19′ west, 452.0 feet; thence south 70° 41′ east, 452.4 feet; thence north on the north-south centerline of Section 1, 1096.8 feet distance to the point of beginning. This parcel of land contains 10.885 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, which ever occurs first.

When patent is issued, it will contain a reservation for ditches and canals and all mineral rights.

The tract is being offered to the Foundation for Advanced Research at fair market value.

ADDRESS: Detail information concerning these reservations as well as specific conditions of the sale and supporting documents are available at: Bureau of Land Management, Salt Lake District Office, Bureau of Land Managment, 2370

South 2300 West, Salt Lake City, Utah 84119.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Salt Lake District Manager, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

For more information contact: Terry Catlin (801) 977–4372.

Jordon C. Pope,

Acting District Manager.

[FR Doc. 90–2060 Filed 1–29–90; 8:45 am]

BILLING CODE 4310-DQ-M

[ES–940–00–4730–13; ES–041953, Group 136]

Wisconsin; Filing of Plat of Dependent Resurvey and Subdivision of Section 18

January 19, 1990.

1. The plat of the dependent resurvey of a portion of the exterior boundaries, a portion of the subdivisional lines and the survey of the subdivision of section 18, Township 40 North, Range 6 East, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 5, 1990.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 5, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 90–2055 Filed 1–29–90; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89–11]

Leonardo Tomas Amador, d/b/a Amador Pharmacy Discount; Revocation of Registration

On December 21, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Leonardo Tomas Amador, d/b/a Amador Pharmacy Discount (Respondent), of 10049 SW. Sunset Drive, Miami, Florida, proposing to revoke DEA Certificate of Registration AA2348173, and to deny any pending applications for renewal. The basis for the issuance of the Order to Show Cause was that the continued registration of the pharmacy was inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held on July 6 and 7, 1989, in Miami, Florida. During the hearing, the Government presented testimony from one witness and introduced four exhibits. Respondent, assisted by counsel, testified on his own behalf and introduced one exhibit.

On July 25, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. In that decision, he found that Respondent's continued registration was inconsistent with the public interest and recommended that the Administrator revoke Respondent's registration. Shortly thereafter, Government counsel filed exceptions to some of the findings and conclusions in the administrative law judge's opinion. Respondent's counsel did not file any exceptions to the administrative law judge's opinion nor did he file a response to the Government's exceptions. On September 7, 1989, the administrative law judge issued a "Supplemental Opinion of the Administrative Law Judge in the Nature of Response to Exceptions" and immediately transmitted the administrative record to the Administrator. On September 27, 1989, Government counsel filed a response to the administrative law judge's supplemental opinion.

On December 7, 1989, Government counsel filed a motion to supplement the administrative record, requesting that Respondent's November 29, 1989, plea of guilty to a felony offense relating to controlled substances be included in the record. The Administrator allowed Respondent's counsel 15 days from December 19, 1989, to file any opposition or response to the Government's motion. No opposition or other response was received from Respondent's counsel. Therefore, the Administrator hereby grants the Government's motion to supplement the record with evidence of Respondent's guilty plea.

After reviewing the entire record in this proceeding, the Administrator adopts the administrative law judge's findings of fact, conclusions of law and recommended ruling to the extent they appear below. The Administrator also makes additional findings and conclusions based upon the record as a whole.

The Administrator finds that Respondent currently holds DEA Certificate of Registration AA2348173, for a retail pharmacy known as Amador Pharmacy Discount. Respondent is the sole owner and proprietor of the pharmacy.

In 1988, the DEA Miami Field Division learned that John Solomon Ghawaly was selling counterfeit "Valium" from Mexico to pharmacies in the Miami area. Valium is a trade name for diazepam, a Schedule IV controlled substance. Valium is produced only by Hoffman-LaRoche, Inc. in Puerto Rico. Mr. Ghawaly was once registered with DEA as a distributor of controlled substances. In 1984, he sold the business but for another year continued to work as a salesman for the distributorship. Since that time, Mr. Ghawaly has not been registered with DEA to distribute or otherwise handle any controlled substances.

Mr. Ghawaly was arrested in 1988 and charged with unlawful distribution of counterfeit controlled substances. Following his arrest, Mr. Ghawaly agreed to cooperate in the DEA investigation of the pharmacies which purchased the counterfeit drugs from him. He informed DEA Diversion Investigators that he supplied the drugs to at least 15 pharmacies or distributors. Amador Pharmacy Discount was one of the pharmacies which purchased counterfeit "Valium" from him.

Respondent had previously purchased legitimate drugs from Mr. Ghawaly when he was properly registered as a distributor. When Mr. Ghawaly sold Respondent the counterfeit "Valium," the drugs were always delivered to him loose in plastic bags, bearing no expiration dates or labeling. In addition, Mr. Ghawaly required Respondent to pay cash for the counterfeit drugs.

In cooperation with DEA, on December 8, 1988, Mr. Ghawaly contacted Respondent and arranged to sell him a large quantity of "Mexican Valium," referring to the counterfeit drug, later that day. The conversation was tape-recorded in Spanish and transcribed in both Spanish and English. As previously arranged, Mr. Ghawaly delivered and sold to Respondent approximately 573 counterfeit "Valium" tablets that afternoon. The tablets

resembled the legitimate product and were found to contain some diazepam. However, ballistic testing revealed that they were counterfeit. Mr. Ghawaly gave the loose tablets to Respondent in a plastic zip-lock bag. They were not sealed in manufacturer's bottles and did not bear any labeling or expiration dates. Respondent paid Mr. Ghawaly cash for the drugs. Mr. Ghawaly did not provide Respondent with a completed invoice for the transaction, as is both business custom and required by law in legitimate transactions. The entire transaction was conducted under the surveillance of DEA Special Agents and Diversion Investigators.

Respondent was arrested immediately following the transaction on December 8, 1988. He was initially indicted shortly after his arrest, but that indictment was dismissed by the United States Attorney. On September 22, 1989, Respondent was reindicted in the United States District Court for the Southern District of Florida. He was charged with one count of possession with intent to distribute a counterfeit substance, in violation of 21 U.S.C. 841(a)(2), a felony offense relating to controlled substances. The indictment stemmed from the December 8, 1988, transaction. On November 29, 1989, Respondent pleaded guilty to that charge and was adjudged guilty by the court. He has yet to be sentenced in the criminal case.

In his defense in the DEA administrative hearing, Respondent testified that he is not a licensed pharmacist in the United States, although he has owned and operated Amador Pharmacy Discount for approximately 15 years. Respondent had been a medical doctor in Nicaragua before immigrating to the United States. He testified that as a doctor in Nicaragua, he had prescribed and dispensed Valium and that it was always packaged in manufacturer's bottles which were sealed and labeled. Respondent claimed that he purchased the "Valium" from Ghawaly on a number of occasions in recent years, despite the absence of proper packaging and labeling, because it was cheaper and he could make a higher profit on their resale in his pharmacy.

Respondent admitted, on cross-examination that, of all the distributors with whom he had dealt, Ghawaly was the only one who did not provide printed invoice forms in connection with his sales to Respondent. Yet, Respondent denied any knowledge that Mr. Ghawaly was no longer a registered distributor or that he was purchasing counterfeit Valium.

In determining whether a registrant's continued registration is consistent with the public interest, the following factors, enumerated in 21 U.S.C. 823(f) are considered by the Administrator:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In reviewing the evidence presented in this case, the Administrator finds that the fourth and fifth factors are most relevant in determining whether Respondent should remain registered with DEA.

The Administrator concludes that the evidence documents Respondent's failure to comply with Federal laws relating to controlled substances. He purchased, for the purpose of dispensing in his pharmacy, drugs he knew, or should have known were counterfeit. The manner and circumstances in which Respondent purchased the drugs from Mr. Ghawaly left no room to doubt that the transaction was illegitimate. Respondent's recent entry of a guilty plea indicates his acknowledgment of the violation.

Respondent's actions constituted a threat to the public health and safety. Respondent did not know, and had no means of knowing, the expiration dates on the drugs he received. He had no proof, or even reasonable indication, that the drugs he received actually contained diazepam. There was no quality assurance of the drugs he received from Mr. Ghawaly. Yet, he admitted that he intended to sell the drugs as legitimate Valium to unsuspecting customers. Respondent was guilty of conduct which threatened the public health and safety. Respondent presented no evidence in mitigation of the overwhelming negative evidence against him. Consequently, the Administrator concludes that Respondent's continued registration is inconsistent with the public interest and must be revoked.

With respect to the posthearing procedures which occurred in this case, the Administrator takes note of the Government's exceptions to the administrative law judge's supplemental opinion and the transmission of the record upon the filing of that opinion. The Administrator finds that, in the event the administrative law judge is compelled to issue a supplemental opinion, he must afford each party a reasonable opportunity to file exceptions. Any such exceptions should accompany the record for the Administrator's consideration. In this case, the administrative law judge transmitted the record to the Administrator simultaneously with the issuance of his supplemental opinion. The Administrator finds that the parties were not prejudiced since all parties had written notice and since exceptions were received and considered by the Administrator after the administrative law judge transmitted the record. In future cases, the administrative law judge should allow all parties 20 days to file exceptions to any supplemental opinion. Any filed exceptions shall be included in the record transmitted to the Administrator.

Pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AA2348173, previously issued to Leonardo Tomas Amador, d/b/a Amador Pharmacy Discount, be, and it hereby is, denied. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective March 1, 1990.

Dated: January 22, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-1986 Filed 1-29-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-68]

Flavio D. Gentile, M.D.; Denial of Application for Registration

On June 30, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Flavio D. Gentile, M.D. (Respondent), of Union City, New Jersey, proposing to deny his pending application for registration as a practitioner, executed on March 14, 1987. The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest, as the term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, timely filed a request for a hearing on the issue raised in the Order to Show Cause and the matter was placed on the docket of

Adminstrative Law Judge Mary Ellen Bittner. Following prehearing procedures, and administrative hearing was held in Washington, DC on March 21, 22, and 23, 1989. At the hearing, the Government presented testimony from three witnesses and introduced 19 exhibits. Respondent presented testimony from six persons, including himself, and introduced seven exhibits.

On October 4, 1989, Judge Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. She concluded that Respondent's registration would be inconsistent with the public interest and recommended that the Administrator deny Respondent's pending application for registration. Neither party filed exceptions to the administrative law judge's opinion and recommended ruling.

After reviewing the administrative record in this proceeding in its entirety, the Administrator adopts the administrative law judge's findings of fact, conclusions of law and recommendation as his own.

Respondent is a physician in private practice and was 64 years old as of the date of the hearing in this proceeding. He received his medical degree from the University of Milan in 1962 and then served an externship, an internship and a residency in the United States. In 1968, he bacame a junior partner with three established physicians in a professional medical association known as Central Medical Group. Following that association's dissolution in 1982, Respondent and some other physicians formed another group, called Family Practice, at the same location. While associated with Central Medical Group, Respondent practiced family medicine, but testified that 20 to 25 percent of his practice was devoted to weight control patients. Respondent is currently a sole practitioner.

In March 1979, Investigator Anne Kriegner of the New Jersey Division of Criminal Justice, Office of the Attorney General initiated an undercover investigation of Respondent's controlled substances handling activities. During the course of the investigation, Investigator Kriegner made several visits to Respondent, posing as a patient named Anne Conners. On each occasion, Investigator Kriegner was weighed, had her heart and lungs checked and had her blood pressure taken, but she never received more tha a cursory examination. Also during each visit, Investigator Kriegner was prescribed and/or dispensed diet medications which are controlled substances. It is undisputed that she did not have, nor did she express, a legitimate need for the drugs. It is also undisputed that Investigator Kriegner is five feet six inches tall and that, during the course of the two—year investigation, her weight varied from about 113 to 120 pounds.

Investigator Kriegner first visited Respondent's office on March 19, 1979. She told Respondent that she was a student, that she had been getting "black capsules" at school to help her stay awake while studying, and that she had been advised that she could get prescriptions from Respondent instead. Respondent cheched to see if Investigator Kriegner's feet were swollen but, aside from taking her blood pressure and checking her heart and lungs, he did not giver her a physical examination. Respondent advised Investigator Kriegner that she could not have the black capsules, but that he would give her "yellow capsules" which were similar. Respondent did not identify what the "yellow capsules" were. Respondent also told Investigator Kriegner that if she had trouble sleeping, he would give her Valium tablets. As Investigator Kriegner left, Respondent gave her a dispensary blank, a slip of paper which listed the names of several drugs. One of the listed drugs was check off. When Investigator Kriegner presented the blank to the dispensary, which was owned and operated by Central Medical Group, she was given Ionamin capsules. Ionamin is a Schedule IV stimulant containing phentermine.

Investigator Kriegner returned to Respondent's office alone on fourteen occasions between March 28, 1979, and October 10, 1980. Although during each visit, Investigator Kriegner gave no indication that she had any legitimate medical need for the drugs she requested, Respondent always issued her prescriptions or dispensary slips for combinations of stimulant controlled substances and Valium or Doriden. In fact, Investigator Kriegner repeatedly told Respondent that she was not taking the drugs to lose weight. Respondent also postdated prescriptions for Investigator Kriegner so she could receive the drugs more frequently. On two occasions, Investigator Kriegner was able to abtain controlled substance prescriptions from Respondent's medical assistant without seeing Respondent during the visits. Respondent was aware that his medical assistant had issued the prescriptions to Investigator Kriegner. On a few occasions, Investigator Kriegner informed Respondent that she was giving some of the drugs to her boyfriend. During her October 10, 1980, visit to his office, Respondent issued her a prescription for controlled substances in the name of "Vince Massaro," the name of her alleged boyfriend, although Mr. Massaro had never been seen or examined by Respondent.

On November 7, 1980, Detective Modarelli of the New Jersey State Police accompanied Investigator Kriegner to Respondent's Rutherford office. She introduced Detective Modarelli as her boyfriend, "Vince Massaro," and said that she had been sharing her drugs with him and had brought him with her so he could "get his own." Detective Modarelli said that they would "cash" the prescriptions, prompting Respondent to ask if he sold drugs. When Detective Modarelli said that he did, Respondent stated that "I'm not supposed to give you pills to sell," and "You're contributing to * * * dope addiction," and accused Detective Modarelli of having "no conscience." Later in the conversation, Detective Modarelli told Respondent that he believed that what adults do in their own lives is their business, and Respondent replied that, "Well, it's my business, too. I gotta watch out for my neck * * *." He stated that Detective Modarelli, "did the wrong thing by telling me * * * I could have suspected it, but I never would have questioned you." Still later, Respondent said that Investigator Kriegner had originally come to him to lose weight and she denied that assertion. Respondent gave Investigator Kriegner prescriptions for 30 dosage units of Doriden 0.5 mg. and 30 dosage units of SPRX–105 in her name, and another prescription for 30 dosage units of SPRX–105 made out to Detective Modarelli.

After giving Investigator Kriegner the prescriptions, Respondent took Detective Modarelli's blood pressure and said it was high, and that he did not want Detective Modarelli to take SPRX–105 or Ionamin because they would increase his blood pressure. Respondent told Detective Modarelli he could take the Doriden and Valium. They also decided that Detective Modarelli and Investigator Kriegner should go to different pharmacies to have the prescriptions filled. Also during the conversation, Detective Modarelli asked for Quaalude, a brand name for methaqualone, which at the time was a Schedule II controlled substance. Methaqualone has since been placed in Schedule I, making it illegal to dispense or prescribe the drug. Respondent indicated that he did not issue prescriptions for Quaalude, saying that he did not have a "number" to issue Schedule II prescriptions.

Detective Modarelli and Investigator Kriegner obtained various controlled substances and prescriptions from

Respondent on a number of occasions between November 20, 1980, and February 25, 1981. During these visits, neither of them claimed to suffer from any medical ailment which would require treatment with controlled substances. In fact, Detective Modarelli frequently discussed his drug selling activities with Respondent. Respondent also agreed to see them and prescribe for them every two weeks, alternating between his two medical offices. He also issued postdated prescriptions for them during this period.

During one of the visits, Detective Modarelli talked alone to Respondent and asked him for the names of other doctors from whom he could receive controlled substance prescriptions. Respondent suggested a Dr. Battalino and gave Detective Modarelli directions to his office. On a following visit, Respondent asked Detective Modarelli what happened with Dr. Battalino; when Detective Modarelli replied that Dr. Battalino was dead, Respondent suggested he contact a Dr. Koenigsberg. Detective Modarelli later initiated an investigation of Dr. Koenigsberg, during which he purchased some 10,000 dosage units of controlled substances, and which resulted in Dr. Koenigsberg's conviction.

During the February 6, 1981, visit, Respondent told the investigators that he had gone to Newark and "got my hand slapped" for improper prescribing practices, presumably by state disciplinary authorities. An investigation revealed that, at that time, the State had no pending action against Respondent. Despite his comments, Respondent continued to issue prescriptions and dispense controlled substances to Investigator Kriegner and Detective Modarelli. The detective also told Respondent that he was receiving large quantities of pills from Dr. Koenigsberg and that the doctor had given him some "black beauties." During the conversation, Detective Modarelli told Respondent that he was not taking any of the medication Respondent prescribed for him. Later that afternoon, Detective Modarelli showed Respondent some pills he claimed to have received from Dr. Koenigsberg. Respondent said that he would try to obtain the same drugs for him. Shortly thereafter, Respondent provided Detective Modarelli with pills he claimed were the same as those he received from Dr. Koenigsberg. In fact, Detective Modarelli determined that those pills contained only caffeine.

Based upon the extensive undercover investigation, Respondent was indicted by a Hudson County, New Jersey, grand jury on 25 counts of unlawful distribution of controlled substances, each count relating to one of the undercover visits. On July 13, 1984, following his entry of a plea of guilty, Respondent was convicted on one count of the indictment and was sentenced to one year of probation and assessed a $25.00 fine.

During the DEA administrative hearing, Respondent defended his dispensing and prescribing of controlled substances to Investigator Kriegner and Detective Modarelli by claiming that he was going through severe financial, personal and professional problems beginning in 1976. He further asserted that he gave drugs to Investigator Kriegner to help her study and because he did not want her to obtain street drugs instead. He admitted that he knew she had no medical need for the drugs. With respect to his prescribing and dispensing controlled substances to Detective Modarelli, Respondent claimed he was "frightened" of the detective and that although he was not physically intimidating or threatening, his body language, appearance, demeanor, voice and aggressiveness were intimidating. However, when pressed on cross-examination to explain the reasons he was frightened, Respondent was evasive and conceded that although he claimed to be frightened, he never called the police.

Investigator Kriegner credibly testifed that she never had to "strongly persuade" Respondent to prescribe or dispense controlled substances to her, and that Respondent did not at any time during her acquaintance with him appear senile, despondent, or depressed. Detective Modarelli credibly testified that all his conversations with Respondent were amicable and that he never threatened Respondent or physically intimidated him. It should be noted that most of the undercover visits were tape-recorded, and that the transcripts of those recordings substantiate the testimony of Investigator Kriegner and Detective Modarelli.

When asked about giving Detective Modarelli the names of other doctors who might sell drugs to him, Respondent replied that he knew Dr. Battalino was dead, but gave the detective the name "just so he would get out of my office. I was hoping that he would go somewhere else and see some other doctor." Respondent testified that he told Detective Modarelli about Dr. Koenigsberg because he had heard rumors about the latter's practice. Respondent also stated that he lied to the investigators about going to Newark for disciplinary proceedings, hoping to frighten them. However, Respondent was unable to reconcile this testimony with his complaints to the investigators about the lapse of time between their visits, nor with his willingness to see them as frequently as he did. Finally, although Respondent testified that he realized that he was inappropriately prescribing and dispensing drugs and that he knew it was wrong at the time, on surrebuttal he testified that he believed he was entrapped by the undercover investigators.

On November 22, 1983, the New Jersey Deputy Attorney General filed a complaint against Respondent with the New Jersey State Board of Medical Examiners alleging that Respondent improperly prescribed and/or dispensed controlled subtances to Investigator Kriegner and Detective Modarelli and permitted an unlicensed assistant to prescribe or dispense controlled substances to Investigator Kriegner. On December 14, 1983, Respondent entered into an interim consent agreement with the Medical Board and agreed to cease practicing medicine as of January 1, 1984. Respondent ceased practice on that date and forwarded his state and Federal controlled substance registrations to the Medical Board.

On July 9, 1984, the Medical Board issued its final order, after Respondent pleaded no contest to the complaint and waived a hearing. In the final order, the Medical Board directed, among other things, that: (1) Respondent's medical license be suspended for a period of five years, effective January 1, 1984, with a proviso that the first 18 months of that period be an active suspension and the remaining period be stayed if Respondent complied with all other terms of the order; (2) following the active suspension and before being permitted to resume practice, Respondent appear before the Medical Board; (3) Respondent not be issued his state or Federal controlled substance registrations "during the entire period of suspension" (however, the Medical Board then specified that Respondent might apply for reinstatement of those registrations "after his completion of the period of active suspenion"); (4) Respondent pay a penalty of $10,000.00 and investigative costs of $593.60; (5) within one year of the date of the final order, Respondent was to successfully complete a course on the use and abuse of drugs, which was to include at least 114 hours of Continuing Medical Education credits and be approved by the Medical Board.

On July 25, 1985, the Medical Board issued an Order of Limited

Reinstatement of License, reinstating Respondent's license to practice medicine, staying the remainder of his suspension, permitting Respondent "to prescribe or dispense Controlled Dangerous Substances, Schedule IV and V only;" and permitting Respondent to petition for modification of the order one year after its effective date. In conjunction with that order, on July 11, 1985, the Medical Board wrote to Respondent advising him that it was "granting you permission to apply for Schedules IV and V C.D.S. [controlled dangerous substances] registrations only."

On March 15, 1989, the New Jersey Deputy Attorney General filed a complaint with the Medical Board based upon Respondent's issuance of controlled substance prescriptions without proper State or Federal authority. On the same date, the Medical Board issued Respondent a Notice of Hearing and Notice to File Answer. There is no indication in the record of the Medical Board having taken any further action as of this time.

Respondent has not possessed a valid DEA registration since he surrendered his registration to the Medical Board in December 1983. The registration which Respondent surrendered to New Jersey authorities was retired on April 30, 1985, after he failed to renew it. Thereafter, he could not lawfully handle controlled substances.

Respondent executed a new application for DEA registration on March 14, 1987, the application which is the subject of this proceeding.

Respondent testified that he was unaware that he did not have Federal authority to handle controlled substances after April 1985. He claimed that his failure to file a renewal application was due to the negligence of his office manager and that he did not think he needed a DEA registration because the State had reinstated his controlled substances handling authority in Schedules IV and V.

As part of the DEA investigation relating to the Respondent's pending application for registration, Diversion Investigators from the DEA Newark Field Division canvassed local pharmacies for controlled substance prescriptions issued by Respondent. At one pharmacy, Investigators located a prescription written for Alva Caputo for 20 dosage units of Tylox tablets, dated October 22, 1985. At another pharmacy, Investigators found two prescriptions for a Phyllis Day for Tussi-Organidin liquid, a Schedule V controlled substance, one dated December 9, 1986, and the other filled on April 11, 1987, but not dated by Respondent. At the same pharmacy, Investigators found a prescription for acetaminophen with codeine #3, a Schedule III controlled substance, dated December 5, 1986, issued to a Muriel Baker.

The hearing record in this case also shows that Respondent ordered controlled substances to be dispensed to hospitalized patients during the period he was not registered to handle such drugs. Respondent further admitted, on cross-examination, that he "may have" telephoned a hospital in 1985 requesting that a patient be given Demerol, a Schedule II controlled substance.

At the DEA proceeding, Respondent defended his prescribing and ordering of controlled substances while he was not registered by DEA. Respondent claimed that, in 1985, he offered a 50 percent partnership in his practice to Eugene DeSimone, M.D., who had been an employee of the practice, and that in return for being made a partner, Dr. DeSimone agreed to countersign any prescriptions that Respondent was not permitted to issue. On surrebuttal, Jane Gentile, Respondent's current wife, supported Respondent's testimony on these points. However, Dr. DeSimone submitted a sworn affidavit stating that, until the Order to Show Cause was issued in this case in July 1988, he was not aware that Respondent had been convicted of a criminal offense relating to controlled substances or that Respondent lacked authority to handle controlled substances. Dr. DeSimone also stated that he did not countersign controlled substance prescriptions for Respondent and only countersigned one of Respondent's hospital orders for controlled substances. The administrative law judge found neither Respondent's, nor his wife's, testimony to be credible. Instead, she chose to credit Dr. DeSimone's affidavit. The Administrator agrees with the administrative law judge and finds that Dr. DeSimone did not countersign or promise to countersign Respondent's controlled substances prescriptions.

Alexander Tambe and Albert Corsi, patients and friends of Respondent who have known him for a number of years, testified to the effect that they were pleased with the medical care provided to them (and, in Mr. Corsi's case, to members of his family) by Respondent. However, neither witness was familiar with the details of the allegations against Respondent in this proceeding, and both indicated that they would be very surprised to learn that Respondent had ever continued to give drugs to someone after that individual advised him he was selling drugs on the street.

Respondent also presented an affidavit from the probation officer assigned to supervise his criminal probation. Among other things, the probation officer stated that Respondent "expressed sincere remorse" during his interview and that Respondent "appeared visibly shaken and remorseful" during his sentencing hearing. This affidavit is entitled to little weight in light of Respondent's testimony at the DEA hearing. In the instant hearing, he showed more regret at the consequences of his actions than remorse for his own wrongdoing.

Respondent testified that pursuant to the Medical Board's order, he completed a mini-residency of 72 didactic and 42 clinical hours at the New Jersey University of Medicine and Dentistry, School of Osteopathic Medicine, on the proper prescribing and handling of controlled substances. He stated that he scored an "excellent" on both portions of the course. Respondent also testified that, as a result of completing this course, he learned "that these are dangerous substances and that they should be handled with caution and not to be given lightly the way I had been doing in the past * * *". He further claimed that he was committed to using the principles he had learned in the course when he returned to active practice.

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration if he determines that the registrant's or applicant's registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), the following factors are considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

The Administrator may properly rely on any one or more of these factors, giving each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration be denied. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989).

In the instant case, it is clear that all of the factors listed in 823(f) are relevant

and that much of the evidence presented pertains to more than one factor.

The Administrator finds that Respondent, indeed, was convicted of a felony offense relating to controlled substances. 18 U.S.C. 1 defines a felony as any offense punishable by death or a term of imprisonment exceeding one year. Respondent was convicted under New Jersey law of a crime which, although characterized as a "high misdemeanor" under state law, is punishable by up to five years imprisonment. Therefore, Respondent was convicted of a felony offense and that conviction can provide a lawful basis for denying Respondent's application for registration.

The Administrator finds no merit in Respondent's testimony that he was entrapped by Investigator Kriegner and Detective Modarelli. A defense of entrapment is viable only when the accused individual demonstrates that he was induced by a Government agent to commit the crime and that he was not otherwise predisposed to commit the crime. *Lopez* v. *United States*, 373 U.S. 427 (1963). In this case, Respondent does not meet either criterion.

With respect to Respondent's defenses that his preoccupation with family and financial difficulties caused him to improperly prescribe and dispense controlled substances to Investigator Kriegner and Detective Modarelli, the Administrator finds that this "defense" does not vitiate Respondent's obligations to practice his profession responsibly.

In this case, Respondent did not fulfill his responsibility to properly handle controlled substances. He provided controlled substances to Investigator Kriegner and Detective Modarelli although he knew they had no legitimate medical need for the drugs. He did not proffer convincing testimony or other evidence demonstrating that he issued the prescriptions and dispensed the drugs out of fear. Respondent's alleged fears are contradicted by his friendly conversations with the investigators as well as his comments about not seeing them often enough. Also, Respondent continued to give the investigators drugs even after he was advised that they were selling the drugs. He postdated prescriptions to provide them with larger quantities of the drugs and provided them the names of other physicians who might provide them with additional drugs. There is no question that all of these practices evidenced a totally cavalier attitude toward the obligations that accompany a registration to handle controlled substances. The fact that Respondent did not make a substantial financial profit from his transactions, and that he gave the investigators cursory physical examiantions, does not render his conduct any less egregious.

With respect to Respondent's handling of controlled substances after April 1985, the Administrator finds that he did so without proper Federal authority. The Administrator is unpersuaded by Respondent's explanations of his actions.

Although the Administrator recognizes that Respondent testified that he is currently aware of his obligation to properly handle controlled substances and that he successfully completed a mini-residency in handling controlled substances, his refusal to accept responsibility for his previous wrongful controlled substance handling activities calls into question his commitment to comply with them in the future.

Overall, the record is replete with evidence that Respondent abused his previous controlled substance handling authority. He has failed to present sufficient evidence to demonstrate that he would handle controlled substances responsibly in the future. Consequently, the issuance of a DEA Certificate of Registration to Respondent would be inconsistent with the public interest.

Therefore, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that the application for registration, executed on March 14, 1987, by Flavio D. Gentile, M.D., be, and it hereby is, denied.

This order is effective Janaury 30, 1990.

Dated: January 23, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90–1987 Filed 1–29–90; 8:45 am]

BILLING CODE 4410–09–M

George A. Johnson, D.O.; Revocation of Registration

On October 30, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to George A. Johnson, D.O. of 1705 W. Master Street, Philadelphia, Pennsylvania 19121, proposing to revoke his DEA Certificate of Registration AJ2409705, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Dr. Johnson's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

The Order to Show Cause was sent to Dr. Johnson by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Johnson and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), George A. Johnson, D.O. is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that beginning as early as 1979 and continuing to the present time, Dr. Johnson prescribed controlled substances, including Talwin, Preludin, Ritalin, Doriden, codeine combination products and Bromanyl, outside the scope of his professional practice and for other than legitimate medical purposes. Dr. Johnson provided individuals with multiple prescriptions for several different controlled substances at the same time. He provided individuals with controlled substance prescriptions in names other than their own, and with more than one prescription for the same drug on the same date. Prescription surveys at Philadelphia area pharmacies revealed that Dr. Johnson issued excessively large numbers of controlled substance prescriptions. For example, a review of one pharmacy revealed that between July 1, 1987 and August 6, 1987, during which period the pharmacy was open for business 31 days, the pharmacy filled 6,870 controlled substance prescriptions. Of these prescriptions, 3,413 were issued by Dr. Johnson. This averages out to over 100 controlled substance prescriptions issued by Dr. Johnson and filled by this one pharmacy on a daily basis. Since Dr. Johnson worked three hours per day, five days per week, it appears that he issued nearly 35 controlled substance prescriptions per hour, based solely on the prescriptions taken to this one pharmacy to be filled. Similar numbers of Dr. Johnson's controlled substance prescriptions were found at other area pharmacies. Investigators of the Drug Enforcement Administration interviewed numerous individuals whose names appeared on prescriptions issued by Dr. Johnson. These interviews revealed that the individuals had not in fact received the prescriptions from Dr. Johnson. Finally, as evidence that Dr. Johnson's controlled substance prescriptions were not issued for a legitimate medical purpose, undercover state and Federal

Agents easily purchased large quantities of Dr. Johnson's prescriptions on the street.

On October 30, 1980, the Pennsylvania Department of Public Welfare suspended Dr. Johnson from participation in the Medical Assistance Program for prescribing controlled substances which were not medically necessary. On November 6, 1985, the Department of Public Welfare denied Dr. Johnson's request for reinstatement in the program, and effective September 26, 1986, he was permanently excluded from participation in the Pennsylvania Medical Assistance Program.

The possession of a DEA registration carries with it great responsibility. Society entrusts registrants with the responsibility to control a force which, when properly used, has great benefit for mankind, but when abused is a force for evil and human destruction. When a registrant abdicates his professional responsibility and permits himself to become a conduit by which controlled substances reach the illicit market and become that force of evil, his access to controlled substances and his ability to prescribe them must be terminated.

Dr. Johnson has so abused his controlled substance registration. The Administrator concludes that Dr. Johnson's continued possession of a DEA registration would be inconsistent with the public interest. No evidence of explanation or mitigating circumstances has been offered by Dr. Johnson. Therefore, the Administrator concludes that Dr. Johnson's DEA registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AJ2409705, previously issued to George A. Johnson, D.O., be, and it hereby is, revoked, and any pending applications for registration, be, and they hereby are, denied. This order is effective March 1, 1990.

Dated: January 22, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90-1985 Filed 1-29-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-56]

Maxwell Pharmacy, Philadelphia, PA; Notice of Hearing

Notice is hereby given that on June 19, 1989, the Drug Enforcement Administration, Department of Justice, issued to Maxwell Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not deny your pending application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, February 1, 1990, commencing at 10 a.m., at the Drug Enforcement Administration Hearing Room, 600 Army-Navy Drive, Arlington, Virginia.

Dated: January 23, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-1979 Filed 1-29-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-42]

The Medicine Shoppe, Donelson, TN; Notice of Hearing

Notice is hereby given that on June 15, 1989, the Drug Enforcement Administration, Department of Justice, issued to The Medicine Shoppe, an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BT1385877, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, February 14, 1990, commencing at 10 a.m., at the United States Bankruptcy Court, Courtroom 226, 701 Broadway, Nashville, Tennessee.

Dated: January 23, 1990.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-1980 Filed 1-29-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-101]

Roy Nachman, M.D.; Revocation of Registration

On September 2, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Roy Nachman, M.D., Respondent, proposing to revoke DEA Certificate of Registration AN8380367, previously issued to him at 12021 Wilshire Boulevard, P.O. Box 551, Los Angeles, California, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The ground for seeking the revocation of Respondent's registration was that he no longer was authorized to handle controlled substances in the State of California.

Respondent, pro se, filed a request for a hearing on the issue raised in the Order to Show Cause and the matter was placed on the docket of Administrative Law Judge Francis L. Young.

On October 19, 1988, Government counsel filed a motion for summary deposition and attached a copy of a "Default Decision" in which the California Board of Medical Quality Assurance (BMQA) revoked Respondent's physician's and surgeon's license, precluding him from practicing medicine and handling controlled substances in the State of California as of January 8, 1988. Respondent did not file a response to the Government's motion for summary disposition.

On December 21, 1988, the administrative law judge issued his opinion granting the Government's motion for summary disposition and recommending that the Administrator revoke Respondent's DEA Certificate of Registration. Shortly thereafter, the administrative law judge received a letter from Respondent stating that on December 10, 1988, he had received from the BMQA a physician's and surgeon's license. In response to Respondent's letter, on January 30, 1989, Government counsel submitted to the administrative law judge a certified statement from an official of the BMQA, dated January 18, 1989, stating that Respondent's physician's and surgeon's license had been revoked and remained in a revoked status at that time.

On February 6, 1989, Respondent submitted to the administrative law judge a copy of a printed wallet-sized card stating that Respondent held a valid physician's and surgeon's license in California, with an expiration date of March 1990. Based upon Respondent's submission, the administrative law judge issued a memorandum vacating his earlier recommended decision. The matter was to be set for a hearing.

On May 17, 1989, Government counsel filed "Government's Renewed and Supplemented Motion for Summary Disposition." Attached to that motion were several documents, including a May 11, 1989, letter from a representative from BMQA stating that, due to a clerical error, Respondent was issued a wallet-sized physician's and

surgeon's certificate. The letter also stated that despite the issuance of the certificate, Respondent "is not licensed as a physician in this state and cannot practice medicine."

On May 19, 1989, the administrative law judge issued a memorandum to the parties giving Respondent until June 26, 1989, to respond to the Government's renewed motion for summary disposition. In that same memorandum, the administrative law judge set a tentative hearing date for August 16, 1989, in San Francisco, California. That date was changed to August 15, 1989, due to a scheduling conflict. Respondent did not respond to the Government's motion. Nor did the administrative law judge issue a written ruling on the pending motion.

On August 8, 1989, in accordance with 21 CFR 1316.62, Government counsel filed "Government's Motion for Consent to File Immediate Interlocutory Appeal to the Administrator." The motion requested permission to appeal two issues to the Administrator prior to the hearing date. The first issue addressed the apparent denial of the pending motion for summary disposition. The second issue addressed the propriety of the administrative law judge's intent to proceed to a hearing where there was no issue in dispute other than whether Respondent had authority to handle controlled substances and where neither party had been afforded an opportunity to be apprised of the opposing party's case prior to the hearing. The following day, the administrative law judge denied the Government's motion to file an interlocutory appeal to the Administrator on either issue.

A hearing was held in this matter on August 15, 1989, in San Francisco, California. Government counsel presented testimony from a representative from BMQA and introduced six exhibits: a facsimile of Respondent's DEA Certificate of Registration, a copy of the BMQA Default Decision revoking Respondent's physician's and surgeon's license; a copy of the January 18, 1989, certification from a BMQA official referred to earlier; a copy of the May 11, 1989, letter from a BMQA official referred to above; a copy of an August 7, 1989, letter from the Cashiering Section of the BMQA indicating that Respondent's licensure fee was being returned to him; and a copy of the state computer printout indicating Respondent's state licensure status. Respondents did not appear, nor was he represented by counsel, at the hearing. No evidence was presented on Respondent's behalf.

On September 29, 1989, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge recommending that Respondent's DEA Certificate of Registration be revoked based upon his lack of state authorization to handle controlled substances. Government counsel filed exceptions to the administrative law judge's opinion and recommended ruling on procedural matters only. Respondent filed neither exceptions to the administrative law judge's opinion and recommended decision nor a response to Government counsel's exceptions. On November 3, 1989, Judge Young filed a supplemental opinion of administrative law judge in the nature of response to exception.

After consideration of the record as a whole, the Administrator accepts the administrative law judge's findings of fact and recommendation that Respondent's DEA registration be revoked, except as they may differ herein.

The Administrator finds that Respondent currently holds DEA Certificate of Registration AN8380367. He further finds that Respondent's physician's and surgeon's license was revoked in California, effective January 8, 1988, following the entry of a Default Decision against him by the BMQA.

Sometime later in 1988, Respondent submitted an application to the BMQA for renewal of his state physician's and surgeon's license. That application was inadvertently processed by the state due to a clerical error. Thereafter, Respondent was sent a wallet-sized physician's and surgeon's certificate. Despite the issuance of this certificate, Respondent's license remained revoked in the State of California. Therefore, Respondent's receipt of the wallet-sized certificate did not constitute a restoration of his license, nor did it authorize him to practice medicine in the state.

The Administrator concludes from the evidence that Respondent's medical license was revoked as of January 8, 1988, and was never reinstated. Based upon his lack of a valid medical license, Respondent is precluded from handling controlled substances in the State of California.

The Drug Enforcement Administration has long held that the language of 21 U.S.C. 823(f) requires state authorization to handle controlled substances as a condition precedent to the issuance of a DEA Certificate of Registration. See, *Avner Kauffman, M.D.*, Docket No. 85–8. 50 FR 34208 (1985). The Administrator cannot register or maintain the registration of a practitioner who lacks state authority to handle controlled substances. Since Respondent currently lacks state authority to handle controlled substances, the Administrator finds that his DEA Certificate of Registration must be revoked and any pending applications for renewal must be denied.

With respect to procedural matters, the Administrator notes that, in cases involving only the issue of whether or not a registrant lacks state authority to handle controlled substances, the grant of a motion for summary disposition is generally appropriate. After reviewing the documents, transcript of the proceeding, and motions filed in this matter, the Administrator finds that the granting of a motion for summary disposition, rather than convening an evidentiary hearing, would have been appropriate in this case. The documents presented by the Government in prehearing motions clearly established that, regardless of clerical errors by the BMQA, Respondent's state medical license was revoked in January 1988, and had not been restored at any time during this proceeding. Since the BMQA is the appropriate state licensing authority in the State of California, its determination of the status of Respondent's state medical licensure is binding upon this agency. Further, the Administrator finds that the testimony and documents presented by the Government during the hearing mirrored the documents filed earlier. The grant of the motion would have resolved this matter in a more expeditious and efficient manner.

Having concluded that there is a lawful basis for the revocation of Respondent's registration, and having concluded that such registration must be revoked, and any pending applications for renewal thereof denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AN8380367, previously issued to Roy Nachman, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective January 30, 1990.

Dated: January 23, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90–1982 Filed 1–29–90; 8:45 am]

BILLING CODE 4410–09–M

William L. Pigg, M.D.; Revocation of Registration

On November 30, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William L. Pigg, M.D., last registered at 2601 Manorwood Drive, Melbourne, Florida, proposing to revoke DEA Certificate of Registration AP8129125 and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The bases for seeking to revoke Dr. Pigg's registration were that he was no longer authorized to handle controlled substances in the State of Florida and, based upon his history of drug abuse, his continued registration would be inconsistent with the public interest.

The Order to Show Cause was sent registered mail, return receipt requested, to Dr. Pigg's registered address and to his current residence in St. Marie, Montana. The return receipt from Montana reflects that Dr. Pigg received the Order to Show Cause on December 8, 1989. More than 30 days have elapsed since he received the Order to Show Cause. Dr. Pigg has neither requested a hearing nor submitted a written statement in this matter. Therefore, in accordance with the provisions in 21 CFR 1301.54(d) and 1301.54(e), the Administrator concludes that Dr. Pigg has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and enters this final order based upon the information contained in the DEA investigative file.

The Administrator finds that on October 13, 1988, the Florida Department of Professional Regulation, Board of Medicine suspended Dr. Pigg's medical license in that state until he can demonstrate to the Board that he is capable of resuming the competent practice of medicine with the reasonable skill and safety to patients. As a result of the suspension of Dr. Pigg's medical license, he is no longer authorized to handle controlled substances in the State of Florida.

The Drug Enforcement Administration has long held that it cannot maintain the DEA registration of an individual who is no longer authorized to handle controlled substances in the state in which he is registered. See 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(3). See also, *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). Therefore, the Administrator concludes that Dr. Pigg's registration must be revoked because of his lack of state authority to handle controlled substances.

The Administrator further finds that Dr. Pigg's continued registration would be inconsistent with the public interest. The investigative file reveals that sometime in 1985 Dr. Pigg began abusing cocaine. Dr. Pigg also had a history of abusing alcohol. Although he entered the Florida Impaired Physicians Program in 1985, he subsequently abused alcohol and controlled substances. On June 30, 1986, Roger Goetz, M.D., the Director of the Florida Medical Foundation Committee on Impaired Physicians, advised the Florida Department of Professional Regulation that Dr. Pigg was not progressing satisfactorily in the Impaired Physicians Program. Dr. Pigg's history of abusing controlled substances demonstrates his unwillingness or inability to comply with state and Federal laws relating to controlled substances. His alcohol and drug abuse also poses a significant threat to patients seeking his medical care. Consequently, the Administrator concludes that Dr. Pigg's continued registration with DEA would be inconsistent with the public interest.

Because of his lack of state authority to handle controlled substances and his history of drug abuse, the Administrator concludes that Dr. Pigg's DEA registration must be revoked. Therefore, pursuant to the authroity vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AP8129125, perviously issued to Wiliam L. Pigg, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending application for renewal of said registration be, and it is hereby, denied.

This order is effective January 30, 1990.

Dated: January 23, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90–1981 Filed 1–29–90; 8:45 am]

BILLING CODE 4410–09–M

Robert A. Rose, M.D.; Revocation of Registration

On October 31, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert A. Rose, M.D., of 4851 Sierra Drive, Honolulu, Hawaii, proposing to revoke DEA Certificate of Registration AR1078511, and to deny any pending applications for renewal of his registration as a practitioner under 21 U.S.C. 823(f). The bases for seeking the revocation and denial actions were that Dr. Rose is not currently authorized to handle controlled substances in the State of Hawaii and that his continued registration would be inconsistent with the public interest.

The Order to Show Cause was received at Dr. Rose's registered location on December 6, 1989. More than 30 days have elapsed since its receipt and Dr. Rose has neither requested a hearing nor submitted a written statement on the issues raised in the Order to Show Cause. In accordance with 21 CFR 1301.54(d) and 1301.54(e), the Administrator concludes that Dr. Rose has waived his opportunity for a hearing in this matter and enters his final order based upon the information contained in the DEA investigative file.

The Administrator finds that Dr. Rose is not currently registered with the Hawaii Office of Narcotic Enforcement (ONE) to administer, dispense, prescribe, or otherwise handle controlled substances in the State of Hawaii. The Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to maintain a DEA registration of a registrant who no longer has state authority to handle controlled substances. See 21 U.S.C. 823(f) and 824(a)(3). See also, *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). Therefore, the Administrator concludes that Dr. Rose's registration must be revoked because of his lack of state authority to handle controlled substances.

The Administrator further finds that Dr. Rose's continued registration would be inconsistent with the public interest. The investigative file reveals that, on a number of occasions, Dr. Rose issued controlled substance prescriptions in the name of a family member and obtained drugs pursuant to those prescriptions. The family member told state investigators that he had not received the drugs allegedly prescribed for him by Dr. Rose. State investigators also were unable to locate a patient chart or medical record for the family member during a search of Dr. Rose's medical office. Interviews with Dr. Rose's employees confirmed that he had issued prescriptions in the names of family members but received the drugs for himself.

Dr. Rose's prescribing of controlled substances in the names of family members for his own use constitutes a

misuse of his DEA Certificate of Registration and demonstrates that his continued registration is inconsistent with the public interest.

Based upon Dr. Rose's lack of state authority to handle controlled substances and his intentional misuse of his registration, the Administrator concludes that his registration must be revoked. Consequently, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), the Administrator of the Drug Enforcement Administration orders that DEA Certificate of Registration AR1078511, previously issued to Robert A. Rose, M.D., be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of said registration be, and they are hereby, denied.

This order is effective January 30, 1990.

Dated: January 23, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90–1983 Filed 1–29–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 88–55]

Charles V. Sperrazza, M.D.; Revocation of Registration

On October 24, 1988, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Charles V. Sperrazza, M.D. (Respondent), of 57 Cascade Street, Buffalo, New York, proposing to revoke his DEA Certificate of Registration, AS2086076, and to deny his application dated February 18, 1988, for renewal of that registration. The statutory predicate for the Order to Show Cause was Respondent's conviction of a felony relating to a controlled substance; specifically, Respondent's conviction following a general court-martial based on the wrongful use of fentanyl, a Schedule II narcotic controlled substance.

By letter dated November 3, 1988, Respondent requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held in Washington, DC on May 18, 1989. On August 8, 1989, the administrative law judge issued his opinion and recommended ruling, findings of fact, and conclusions of law and decision. No exceptions were filed. On November 1, 1989, the administrative law judge transmitted the record of these proceedings to the Administrator of the DEA. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby enters his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Respondent is an anaesthesiologist who was licensed to practice medicine by the State of New York in 1982. He entered the United States Air Force in November 1985, and was assigned to the Wright-Patterson Air Force Base in Ohio. In March of 1986, due to questions concerning his competency and suspicion of his possible use of controlled substances, Respondent was sent to the Medical Center at Lackland Air Force Base in Texas for a competency evaluation. On April 1, 1986, one of the evaluating anaesthesiologists at the Medical Center noted that Respondent had left three syringes labeled fentanyl unattached on a cart in the operating room. Since leaving controlled substance syringes unattended violated the Medical Center's policy, the evaluating doctor removed the syringes and turned them over to her supervisor, who tested them and determined that the syringes contained either saline solution or distilled water, with only small traces of fentanyl. Respondent was immediately admitted as an in-patient to the Medical Center. A physical examination performed at that time revealed that Respondent had puncture marks consistent with the use of hypodermic needles on the back of each hand; both his blood and urine tests were positive for fentanyl.

Respondent came before a general court-martial in June 1987, where he pled guilty to the wrongful use of fentanyl, 10 U.S.C. 912(a). He was sentenced to dismissal from the Air Force and forfeiture of all pay and allowances. On August 9, 1988, the State of New York suspended Respondent's medical license for three years. The suspension was then stayed and Respondent was placed on specific probationary terms for three years. These terms included that Respondent submit to random urine testing at least once every four months during the period of probation.

At the time of the hearing, Respondent was employed as a house physician at the Millard Filmore Suburban Hospital in New York. He was employed under a contract for the period from July 1, 1988 to June 30, 1989. He has been accepted for a one-year residency program in anaesthesiology at another hospital beginning in January 1990.

The Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has been convicted of a felony relating to a controlled substance. The administrative law judge concluded that Respondent's court-martial constituted a sufficient basis to so revoke Respondent's registration and to deny his pending application for renewal of that registration. 21 U.S.C. 824(a)(2). See also *Pearce* v. *U.S. Dept. of Justice, Drug Enforcement Admin.*, 867 F.2d 253, 255 (6th Cir. 1988); *Fourth Street Pharmacy* v. *U.S. Dept. of Justice*, 836 F.2d 1137, 1139 (8th Cir. 1988); *Fitzhugh* v. *Drug Enforcement Admin.*, 813 F.2d 1248, 1253, (D.C. Cir. 1987).

The administrative law judge recommended that Respondent's DEA Certificate of Registration be revoked. In doing so, he noted that Respondent did not need his own DEA Certificate of Registration to handle controlled substances in the course of his duties as an employee of a hospital. The revocation of his own registration notwithstanding, Respondent could handle controlled substances within the scope of his employment with the use of the hospital's DEA Certificate of Registration, so long as the Administrator granted the hospital a waiver for Respondent. The administrative law judge stated that this would allow Respondent to continue in the practice of medicine while removing him from the possibility of abusing his own DEA registration. Thus the public interest would be protected.

Based upon a review of the administrative record, the Administrator adopts the findings and recommendations of the administrative law judge. Pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), the Administrator hereby orders that Respondent's DEA Certificate of Registration AS2086076 be revoked and his application for renewal of that registration be denied. The Administrator notes that under 21 CFR 1301.76(a), a DEA registrant may not employ as an agent or employee with access to controlled substances any person who has had his registration revoked or an application for registration denied by DEA. However, this provision may be waived by the Administrator upon application by the employer. The Administrator will grant such a waiver if requested to do so by Respondent's employer.

This order is effective March 1, 1990.

Dated: January 22, 1990.

John C. Lawn,

Administrator.

[FR Doc. 90–1984 Filed 1–29–90; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: January 18, 1990.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133–0024.
Form Number: None.
Type of Review: Revision of a currently approved collection.
Title: Mergers of Federally-Insured Credit Unions.
Description: Provide merger procedures for credit unions where at least one of the credit unions involved is federally-insured.
Respondents: Federally-insured credit unions.
Estimated Number of Respondents: 450.
Estimated Burden Hours per Response: 3.30 hours.
Frequency of Response: On Occasion.
Estimated Total Reporting Burden: 1,485 hours.
OMB Number: 3133–0108.
Form Number: None.
Type of Review: Revision of a currently approved collection.
Title: Procedures for Monitoring Bank Secrecy Act Compliance.
Description: Allow NCUA to determine whether credit unions have established a program reasonably designed to assure and monitor their compliance with currency recordkeeping and reporting requirements.
Respondents: Federal credit unions.
Estimated Number of Respondents: 13,640.
Estimated Burden Hours per Response: 3.02 hours.
Frequency of Response: One Time.
Estimated Total Reporting Burden: 41,180 hours.
OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Federal Credit Union Quesionnaire
Description: This is a one-time survey to determine the effectiveness of the examination and supervision program for federally insured credit unions.
Respondents: Federally-insured credit unions.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours per Response: .25 hours.
Frequency of Response: One Time.
Estimated Total Reporting Burden: 500 Hours.
Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street, NW., Washington, DC 20456.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,
Secretary of the NCUA Board.

[FR Doc. 90–2052 Filed 1–29–90; 8:45 am]
BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–23 to the Carolina Power & Light Company (CP&L or the licensee), for the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to fuel enrichment.

The proposed action is in accordance with the licensee's applications dated August 4, November 16, and December 13, 1989.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher enrichment fuel, to be delivered for Cycle 14 operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The proposed revisions would permit use of fuel enriched with Uranium 235 in excess of 4 weight percent and up to 4.2 weight percent. The licensee is currently limited to operation with up to 3.9 weight percent enriched fuel. While fuel burn-up may be greater than that experienced under the cureent limitation, the licensee does not expect the fuel burn-up to be higher than the currently approved peak level for this proposed amendment. The safety considerations associated with reactor operation with higher enrichment have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuels are within the bounds of the staff's earlier assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation" (53 FR 30355), dated July 7, 1988. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits is either unchanged or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c).

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operations flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of the H. B. Robinson Steam Electric Plant, Unit No. 2" dated April 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies in person.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated August 4, 1989, and submittals November 18 and December 13, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

For the Nuclear Regulatory Commission,

E. G. Tourigny,

Acting Director Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–2087 Filed 1–29–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–454 and 50–455]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the licenses for the Commonwealth Edison Company (CECo, the licensee) for Byron Station, Units 1 and 2, located in Ogle County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would allow the use of Vantage 5 fuel.

These revisions to the licenses of Byron Station, Units 1 and 2, would be made in response to the licensee's application for amendment dated July 31, 1989.

The Need for the Proposed Action

Pursuant to 10 CFR 50.90, the licensee has proposed amendments to Facility Operating Licenses NPF–37 and NPF–66 for Byron Station, Units 1 and 2, respectively. The amendments would allow the use of Vantage 5 fuel.

The Vantage 5 fuel design has already been approved by the NRC, with certain conditions and has several differences from the fuel currently being used. These include: integral burnable absorbers, intermediate flow mixer grids, reconstitutable top nozzle, extended burnup capability, axial blankets, and debris filter bottom nozzle.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Technical Specifications. The loss-of-coolant accident was reanalyzed and the results meet the criteria of 10 CFR 50.46. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to nonradiological impacts, the proposed amendment involves system located entirely within the restricted area as defined in 10 CFR part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission also concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Actions

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operation flexibility.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statements for the Byron Station, Units 1 and 2, dated April 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's submittal of July 31, 1989 and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant adverse effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 11, 1989 (54 FR 37518). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the request for amendments, dated July 31, 1989 and the Final Environmental Statement for Byron, dated April 1982 which are available for public inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC 20555, and at the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Dated at Rockville, Maryland, this 24th day of January 1990.

For the Nuclear Regulatory Commission.

John W. Craig,

Director, Project Directorate III–2, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 90–2088 Filed 1–29–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of An Information Collection Submitted To OMB For Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. chapter 35), this notice announces a request submitted to OMB to extend a clearance for collecting data from selected Federal agencies for general purpose statistics. On a biennial basis, occupational data not otherwise available to the Office of Personnel Management are collected using OPM

Form 1312 or automated means. This report is completed by 25 agencies, and takes approximately 12 hours to compelete, for a total burden of 300 hours. The data are used by the Office of Personnel Management to manage personnel programs and evaluate policy alternatives, and also by other executive branch agencies, and by Congressional staffs. For copies of the clearance package, call Larry Dambrose on (202) 632–0259.

DATES: Comments on this data collection should be received by March 1, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3002, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Randall T. Matke, (202) 653–5465, U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–2033 Filed 1–29–90; 8:45 am]

BILLING CODE 6325–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3501 et seq.] this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for review and are available for public review and comment. A copy of the information collection may be obtained from Mr. Dick Haag, Office of the Associate Director for Volunteer Recruitment and Selection, United States Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Haag may be called at 202–254–7080. Comments on these forms should be addressed to Mr. Donald Arbuckle, Desk Officer, Office of Management and Budget, Washington, DC, 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of the Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps Volunteer service.

Burden on the public:

a. *Annual reporting burden:* 14,000 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden hours per response:* 1 hour.

d. *Frequency of response:* On occasion.

e. *Estimated number of likely respondents:* 14,000.

Title: Peace Corps Reference Form.

Need for and Use of the Information: The United States Peace Corps needs this information in order to evaluate applicants for Volunteer service. The information is used to select and place applicant/nominees to Peace Corps Volunteer programs.

Respondents: Individuals listed as references by applicants for Volunteer service.

Burden on the public:

a. *Annual reporting burden:* 21,000 hours.

b. *Annual recordkeeping burden:* 0 hours.

c. *Estimated average burden hours per response:* 30 minutes.

d. *Frequency of response:* On occasion.

e. *Estimated number of likely respondents:* 42,000.

This notice is issued in Washington, DC on January 25, 1990.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 90–2072 Filed 1–29–90; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1219]

Intention To Cancel Registrations of Certain Investment Advisers

January 22, 1990.

Notice is hereby given that the Securities and Exchange Commission (the "Commission") intends to issue an order, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the "Act"), cancelling the registrations of those investment advisers whose names appear in the attached Appendix.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

Pursuant to paragraph (b) of Rule 204–1, an investment adviser must promptly file an amendment to its application for registration (Form ADV) when its address changes or when certain other information becomes inaccurate in a material manner.[1]

In 1987, the Division of Investment Management (the "Division") began providing all registrants with a booklet of registration materials on an annual basis. Every booklet contains, among other things, copies of Forms ADV, ADV–S and ADV–W.[2] The forms contained in the booklet, when properly filed, are used by the Commission to update its records. Since commencement of this annual mailing, the Division has had correspondence, to each of the registrants named in the Appendix, returned as "undeliverable" (addressee unknown, forwarding order expired, or no longer at this address, etc.) by the U.S. Postal Service. The Commission's records disclose that these registrants have not filed amendments to their registrants which reflect their current business and/or mailing addresses, as required by Rule 204–1(b) under the Act. The Commission's records also disclose that many of these registrants have not made annual filings of Form ADV–S, as required by Rule 204–1(c) under the Act. Accordingly, the Division believes that reasonable grounds exist to support a finding that these registrants are no longer in existence or are no longer engaged in business as investment advisers.

Notice is further given that any interested person may, not later than February 23, 1990, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, and he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order cancelling any or all of the registrations named in the Appendix upon the basis of the information stated herein unless an order for hearing on said cancellation shall be issued upon request or upon the Commission's own motion. Persons who

[1] Pursuant to section 204 of the Act and Rule 204–1 thereunder, an investment adviser must also file an annual supplement (Form ADV–S) providing the Commission with certain information about their business activities.

[2] The Form ADV–W is used to voluntarily withdraw from registration as an investment adviser.

request a hearing, or to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For further information contact: Robert L. Lewis, Financial Analyst at (202) 272–3015 (Division of Investment Management, Office of Financial Analysis & Inspections).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Appendix

Atlanta Regional Office

Abrahamson, Lee Martin (801–19124)
American Capital Advisory Services, Inc. (801–25239)
Asset Management Corp. /FL/ (801–12588)
Asset Management Group, Inc. /LA/ (801–28264)
Asset Planning Services, Inc. /GA/ (801–20860)
Asset Planning Services, Inc. /LA/ (801–29419)
Atlantic Advisory Corp. (801–29276)
Baker, Thomas & Associates, Ltd. (801–28516)
Baldwin, Boon & Associates (801–29394)
Baldwin, Rust & Dizney Advisory Service (801–25044)
Bell, Bernard Victor (801–26642)
Benson, David Allen (801–27015)
Benson, Morgan Co., Ltd. (801–25243)
Black, William Associates, P.A. (801–24541)
Blackstock Capital Management Corp. (801–16808)
Bowman, Hugh Co. (801–13522)
Brittain, Donald Lee (801–23193)
Brown, David Michael (801–23042)
Brown, Leonard Lee Roy (801–19883)
Brown, Robert Douglas (801–29257)
Burleigh Enterprises, Inc. (801–27900)
Campbell, Maurice William, Jr. (801–26783)
Center for Estate & Financial Planning (801–26684)
Clement, Steven Malcolm (801–30720)
Complete Financial Planning, Inc. (801–26607)
Computer Evaluations, Inc. (801–23808)
Consolidated Consultants, Inc. (801–28040)
Cutler, William Michie, Jr. (801–20168)
DFA Advisory Corp. (801–17036)
Davis, Clark Stanley (801–33067)
Davis, Dempsie Augustus, Jr., (801–21309)
Debatin Associates, Inc. (801–27220)
Echelon Management (801–24479)
Eddleman & Associates, Inc. (801–28055)
FPN Advisory, Inc. (801–30467)
FTC Investment Management, Inc. (801–28072)
Financial Advisory Consultants, Inc. (801–10686)
Financial Design, Inc. (801–20965)
Financial Programs of South Carolina, Inc. (801–23404)
First Atlantic Planning Corp. (801–25952)
Folsom, William Charles, III (801–30522)
Frank, Jonathan Stuart (801–25953)
Frenke, Kenneth Bruce (801–29404)
Furlong, Edward George (801–23468)
Gelinas, Gareth Stanley (801–24757)
Gordon, H.L.H. & Co., Inc. (801–09764)
Gordon, James Toney (801–22931)
Gott, Sammy Lee (801–22285)
Gulf Capital Management, Inc. (801–31321)
H&H Investment Consultants Group, Inc. (801–20526)
Harrison, Phyllis Elizabeth (801–25502)
Holleman, Joseph Sherrod (801–26785)
International Tax Institute Corp. (801–24785)
Kimmel, Steven D. (801–27207)
Knight & Wiggins, Inc. (801–28186)
Lazear, Robert Peter (801–29667)
Little, B.A. & Associates, Inc. (801–29967)
Market Timing Services, Inc. (801–27539)
Market Timing Systems, Inc. (801–23136)
McInvale, George Maxwell (801–22789)
Metcalf, Paul Vincent (801–16835)
Miles, Linda Streetman (801–29885)
Morrell, David Earl (801–30726)
Murphy, Charles Joseph (801–18995)
Nies, R.J. Investment Advisory, Inc. (801–17675)
Noble, James Crispin (801–21596)
Norris, Michael E. (801–16910)
Pfleger, Thomas Joseph (801–28221)
Ponder Planning Corp, (801–29515)
Professional Investment Adviser, Inc. (801–31157)
Puerto Rico Asset Management, Inc. (801–31044)
Retirement Actuaries, Inc. (801–20905)
Richardson, Francis Joseph, III (801–15518)
Roberts, G. Allen (801–19554)
Roebuck, Daniel Loys (801–29450)
Rosenberg, Charles (801–25956)
Russell, Adams & Associates, Inc. (801–26629)
SHC Investment Advisors, Inc. (801–23895)
Secured Investment of Miami, Inc. (801–25657)
Smith, Charles Ray (801–32728)
Smith, Wilton R. (801–25412)
Sneed, Charles Stanley (801–28415)
Sorrell, George M., Jr. (801–22698)
St. Johns Capital Management Corp. (801–25332)
Straka, Robert Associates, Inc. (801–25697)
Talbert, Blackburn & Johnson, Inc. (801–26163)
Tassios, Leftheri Panagiotis (801–29117)
Technology Investment Services, Inc. (801–19961)
Testa, Mark Garry (801–20052)
Tooker, John Taylor (801–10231)
Total Financial Planning Service, Inc. (801–27926)
Total Planning Services, Inc. (801–17670)
Traynham, James Carroll (801–27372)
Tri Net Advisors, Inc. (801–26711)
WRC Capital Management, Inc. (801–30101)
Wealth Accumulation Counselors, Inc. (801–20980)
Webster, James William (801–25098)
Weissman, Richard Scott (801–27861)
West, Gloria Jean (801–32774)
Williams, Kambis, Inc. (801–21218)
Wilson, Gordon Eugene (801–22951)
Wilson, Peter Otter (801–29443)
Wright, John W. & Associates, Inc. (801–27166)
Zumpano, Gale Koven (801–23840)

Boston Regional Office

American Investment Team, Inc. (801–18522)
Asset Development, Inc. (801–31211)
Asset Development Group, Inc. (801–26619)
Atamian & Co., Inc. (801–18655)
Athearn, Edward Allen (801–24975)
Atlantic Planning Group (801–24577)
Barnett, James Douglas, Jr. (801–21357)
Blewer, John M., Inc. (801–12726)
Boston Value Advisors, Inc. (801–27755)
Brainard, John Edwin, II (801–27590)
Brist Inc. (801–31809)
Britton, Brockbank & Company, Inc. (801–24206)
Brock Management Co. (801–27971)
Broadsword Group, Ltd. (801–16514)
Brunell, Diane Jucha (801–27529)
CD Investment Corp. (801–21397)
Cattelona, Mark Richard (801–29415)
Chestnut Hill Capital Management Corp. (801–25065)
Connecticut Financial Planning, Inc. (801–22742)
EBF Boston Research, Ltd. (801–20644)
Financial Advice Unlimited, Inc. (801–27159)
Financial Dynamics Corp. (801–26416)
First Alliance Financial Services, Inc. (801–11461)
First Wilshire Capital Management, Inc. (801–27813)
Gavan, Terrence Joseph (801–25917)
Gregware, James Murray (801–31031)
Hayden Tax Associated, Inc. (801–19142)
Hillenmeyer Investment Associated (801–12280)
Hirschhorn, Richard Corp. (801–18080)
Hirst, Leonard Thomas Arthur, II (801–27172)
Kea, William Dennis, Sr. (801–18914)
Kett, Philip Dennis (801–22506)
Knight, Bain, Seath, Holbrook & Partners (801–28470)
Lamkin, Jordan Associates (801–29854)
Lighthouse Investment Management, Inc. (801–31623)
McCormick Associates (801–14762)
McCormick & Raymond Management Corp. (801–20058)
Mintzer Insurance Services Co. (801–24781)
Momeni, Moji (801–29119)
Murphy, Robert Peter (801–28530)
Murray, Joseph Earl (801–21254)
New England Asset Management Corp. (801–14024)
North, North & Nelson, Inc. (801–21245)
Omansky, Jeffrey David (801–20399)
Patriot Investment Co., Inc. (801–29921)
Persson, Carl Robert (801–28168)
Pikor, Robert Francis (801–31020)
Robey, Leon Joseph (801–25061)
Rosentahl, Milton Lenard (801–13405)
Rothman Research, Inc. (801–28905)
Rudnick, Herb Syd (801–30816)
Security Financial Corp. (801–24712)
Sewall, Kenneth S. (801–26214)
Shaunessy, Robert Thomas (801–22716)
Starr, Stanley Bernard, Jr. (801–26520)
Successful Money Management of Maine (801–30440)
Walsh, Michael John (801–28959)
Webber, James Benson (801–17811)
Weston Investment Advisory, Inc. (801–28619)
Yates, William Marshall (801–25822)

Chicago Regional Office

Aegis Financial Planning Services, Inc. (801–25901)
Ahmed, Saleem (801–28566)
Airington, Donald Dean (801–26769)
Allen, Howard Lee, Jr. (801–24632)

Althans, Gregory Paul (801–19481)
American Asset Management Co. (801–19394)
American Wealth Advisory Corp. (801–26149)
Anchor Financial, Inc. (801–30874)
Baldwin, Richard Allen (801–23902)
Barr, Douglas Earl (801–24566)
Benefits Management Associates, Inc. (801–16548)
Boren, Stuart Eliot (801–25245)
Bovee, Mary Douglas (801–24183)
Business Consultants, Inc. (801–27605)
Bussell, Charles Willard (801–30487)
Campbell, Paul F. (801–23401)
Capital Strategies Financial Corp. (801–16837)
Chimorel Services, Inc. (801–25656)
Cocramid Asset Management Corp. (801–21924)
Cohrs, William Henry (801–23508)
Colasanti, Joseph (801–22272)
Consumer Planning Agency (801–20926)
Cook, Gregory Donald (801–23355)
Cross Financial Directions Corp. (801–22401)
Data Research Corp. (801–28232)
Datametrics Forecasting Corp. (801–27844)
Davidson, John Sinclair, Jr. (801–19684)
Davis, Eve Joan (801–26958)
Daya, Bierdz & Bierdz, Ltd. (801–27277)
Despain, Robert Lee (801–27037)
De Stefano, Robert Joseph (801–17660)
EWS Investment Management, Inc. (801–26448)
Evergreen Group, Inc. (801–19842)
Fant, Michael Troy (801–29659)
Farthing, Edward Richard (801–28229)
Fazio, John, Jr. (801–26725)
Fenchurch Advisors, Inc. (801–26053)
Financial Advisory Support Systems, Inc. (801–23761)
Financial Care Corp. (801–30525)
Financial Independence Advisers, Inc. (801–25281)
Financial Planning Consultants, Inc. /KY/ (801–19614)
Financial Planning Group, Inc. (801–23798)
Financial Planning Priorities, Inc. (801–23534)
Financial Planning Strategies /MI/ (801–22776)
Forish, Richard James (801–18137)
Fowler, Jack Kenneth (801–19963)
Fox, Richard Farland (801–12983)
French, Mary S. (801–30675)
Futransky, Harold Morton (801–09236)
Gordon, Bruce Stephen (801–21147)
Grodt, Moore, Gregson Insurance, Inc. (801–26717)
Halsey, Thomas Allen (801–23330)
Healey, William Peter (801–24562)
Hicks, Bruce Benett (801–30026)
Howard, Albert Wallace, Jr. (801–18896)
Howell, William Milton (801–21547)
Hutton Financial Services, Inc. (801–19195)
Indovest, Inc. (801–27558)
Innovative Investments, Inc. (801–27389)
Institutional Option Management Corp. (801–25737)
Integrated Planning Group, Ltd. (801–31545)
Invest America Midwest, Inc. (801–28418)
Investment Assurance, Inc. (801–22175)
Jahnke, Glenn H. & Assoc., Inc. (801–18066)
Kemp, John Thomas (801–28739)
Keystone Assets, Inc. (801–34511)
Knapp, K.A. & Co., Inc. (801–19969)
Kumbhani & Co. (801–29297)
Kurtz, McCarty & Associates, Inc. (801–26431)
LaSalle Portfolio Management, Inc. (801–27540)
Laymon, Terry M. (801–26016)
Levine, Lloyd S. & Associates, Ltd. (801–17009)
Leytze, David Alan (801–09368)
Liberty Asset Advisors, Inc. (801–20264)
Lieberman Financial Management, Inc. (801–30576)
Lustig Group, Inc. (801–27330)
Lux, Thomas Edward (801–29100)
MKS Investment Advisers, Inc. (801–30303)
Marcy, Michael Joseph (801–15554)
Margolin, Spencer Paul (801–16348)
Mass Financial Group, Inc. /IA/ (801–19040)
Maxwell, Mary Suzanne (801–30000)
McCulloch, Kenneth Munro (801–24628)
McPhee, John D. (801–11906)
Meridian Trading Co., Inc. (801–29887)
Miller Ensign (801–31262)
Minnesota Professional Management, Inc. (801–14870)
Mitchell, Alexis CFP (801–18474)
Monath, Donald Raymond (801–15372)
Monetary Financial Associates, Inc. (801–24002)
Morman, James Lee (801–26406)
Mutschler, John G. & Associates, Inc. (801–12330)
Mutual Fund Management Corp. (801–27611)
Nash & Schultz (801–31474)
National Financial Services, Inc. (801–27835)
Neuger, Stephen John (801–23967)
Newton, Allen & Co., Inc. (801–28182)
Osborn & Associates, Inc. (801–18718)
PBS Investment Advisory Services, Inc. (801–20149)
Painter, Wynkoop & Associates, Inc. (801–22408)
Patch, Richard King (801–22708)
Petersen, Steven Charles (801–29056)
Pike, Dennis Wendel, Jr. (801–23958)
Powers, Jeffrey Scott (801–23209)
Professional Planning Associates, Inc. (801–27624)
REPI Investments, Ltd. (801–32652)
Real Fine Associates, Inc. (801–10560)
Renaissance Financial Advisory Corp. (801–26746)
Resource Strategic Services, Inc. (801–19582)
Richards, Robert Jack (801–21738)
Richards, Susan Caves (801–18836)
Ruedi, Paul (801–27423)
Russell, Robert John (801–24954)
SSR Consulting Services, Inc. (801–33096)
Safe Harbor Management Corp. (801–28124)
Schissel, Donald & Associates (801–25292)
Schmidt, Joy & Associates, Inc. (801–22744)
Sheedy, Stephen Craig (801–25510)
Sheenan, Michael William (801–27719)
Shievitz Enterprises, Inc. (801–24548)
Shuler, Leon A. (801–22333)
Shumate, Scott Lee (801–25199)
Smart, H.P. Associates, Inc. (801–19011)
Solberg, Charles Russell (801–23029)
Stewart & Suits, Inc. (801–28131)
Stone, La Janace (801–25721)
Synergistic Planning Group, Inc. (801–15185)
TCI Corp. (801–17417)
Tadin, John P. Associates, Inc. (801–25701)
Tax Coordinated Investments, Inc. (801–23050)
Tiedje Wealth Development Corp. (801–24489)
Total Financial Planning, Inc. /MN/ (801–18304)
Towle Real Estate Investment Advisers (801–28373)
Tulman, Ross Paul (801–24069)
Universal Commodites, Ltd. (801–26538)
Valley Investment Counselors (801–30563)
Wagner, Jeffrey Tennant (801–20748)
Walsman, Richard Lewis (801–22184)
Weisberg, Bruce Calvin (801–16827)
Whitaker, Charles J. (801–20371)
Willison, Spencer Scott, Jr. (801–23541)
Wolnewitz & Associates, Inc. (801–27868)
Wood, Michael Lee /MI/ (801–11786)
Wrchota, Thomas William (801–30316)
Zapotocky, Charles & Co., Ltd. (801–25080)

Denver Regional Office

Advisors West Financial Group (801–25152)
Allabashi Financial Corp. (801–29200)
Allen, Warren John (801–30014)
Brewer Planning & Management (801–19296)
Brink, Miless Lee (801–23647)
Century Investment Advisors, Ltd. (801–26450)
Cook, William Sydney (801–25293)
Eisenberg, Steven Eric (801–22511)
Erisa Mortgage Co. /CO/ (801–29695)
Financial Architects, Inc. /CO/ (801–21099)
Financial Planning Corp. of Colorado (801–17874)
Fischer, Robert Alfred (801–29334)
Fleming, Marilyn Anne (801–22927)
Freeport Financial Services, Inc. (801–18417)
Heldt, Marilyn Rae (801–26195)
Hunt Group (801–26442)
Hatchings, Lynn & Associates, Inc. (801–22959)
Johnson, Carlton Paul, Jr. (801–30681)
Kraft, Gary Leo (801–30572)
Mangelson & Associates Financial Services (801–25511)
Morris, Stephen Albert (801–22992)
Natural Wealth Real Estate, Inc. (801–28271)
Newcastle Financial Group Planning Div., Inc. (801–16949)
Nice, Diana Lyn (801–21614)
Nine J Corp. (801–22877)
Page, Leland Bentley (801–19892)
Peterson, Gary Lee (801–19995)
Preferred Advisors, Inc. (801–27564)
Rice, Mark Legette (801–29020)
Riordan Corp. (801–24824)
Robbins & Associates, Inc. (801–25680)
Security Financial Corp. /UT/ (801–26665)
Stephen, Thomas Clinton (801–28101)
Sweet, William Ellery, III (801–14889)
Trident Capital Corp. /CO/ (801–31245)
U.S. Financial Counseling, Inc. (801–30994)
Wayman, Cooper Harry (801–22813)
Wealth Accumulation Corp. (801–27417)

Fort Worth Regional Office

AAA Financial Planning, Inc. (801–26571)
Arnone, Charles (801–16634)
Asset Planning Services, Inc. /KS/ (801–26174)
Assets Planning & Development, Inc. (801–19524)
Auer, John Franklin (801–27991)
BCI Financial Group, Inc. (801–20501)
Balanced Financial Advisory Corp. (801–18939)
Bean & Co. (801–20270)
Blanchard, Walter Louis, III (801–30318)
Capital Financial Profiles of the Southwest (801–27401)
Cornell, David M. /TX/ (801–18424)
Crossland, Kenneth Ray (801–19020)
Davis, Sarah Frances (801–23768)

Ehrman Investment Group, Inc. (801–21573)
Equity Asset Management Group (801–29929)
Evergreen Financial Services (801–22655)
Exchequer Enterprises, Inc. (801–21505)
FD Advisory Services, Inc. (801–27685)
FPC Advisory, Inc. (801–21315)
Farrar, Thomas Ray (801–23035)
Feith, Ralph Joseph (801–22930)
Fidelis Asset Management, Inc. (801–25058)
Financial Advisement Consulting Team, Inc. (801–26988)
Financial Cornerstone, Inc. (801–22767)
Financial First Consultants, Inc. (801–22966)
Financial Information & Resource Service of Texas, Inc. (801–26027)
Financial Service Clinic, Inc. (801–18534)
Fineman, Theodore Philip (801–16636)
First San Antonio Financial, Inc. (801–19144)
Fontenot, Marsha Jones (801–24801)
Franz Co., Inc. (801–24115)
Grant Co. (801–27425)
Grasso, Charles Edgar (801–27370)
Henderson Asset Management, Inc. (801–28922)
Johnson Financial Services, Inc. (801–22304)
Kalb, Stuart Barry (801–28605)
Kerr, William Sterling, III (801–27058)
Kimball, Richard Pearl (801–17007)
Lerner, David S. (801–28062)
Leslie, Linda Lee (801–18761)
Lifestyle Advisory Services, Inc. (801–27733)
MCTC 1 (801–17679)
Martin, Leonard Earl (801–23231)
Mason, Joseph Daniel (801–29897)
McDonald, John Henry (801–29565)
McElwain, Robert John (801–19117)
Mundy, Linda Ann (801–23613)
Nelson, Philip Stuart (801–24934)
NFact, Inc. (801–22627)
North Texas Asset Management, Inc. (801–28852)
Nvest Financial Planning, Inc. (801–22297)
Oppenlander, James Gayle (801–26623)
Pace Financial Management, Inc. (801–17497)
Picerno, Kenneth Robert (801–28728)
Piper, Robert Griffen (801–18959)
Professional Planning Consultants, Inc. (801–15679)
Redmon, June Jett (801–23153)
Robertson, Stewart Lee (801–19831)
Rowles, R. Patrick & Co., Inc. (801–16258)
Sanders, John Thomas, IV (801–19510)
Spung, Richard Investments, Inc. (801–25465)
Stevenson, Kenneth Turner (801–27506)
Sunbelt Financial Group, Inc. (801–20026)
Texas Investment Planning Services, Inc. (801–18668)
Thoele, Charles Edward (801–22599)
Weisberg, Alex F., Jr., Investment Adviser, Inc. (801–30371)
Wellman, Robert Francis (801–25948)
Whitwell, Omer Dwight (801–16928)
Wilkinson, David Andy (801–24640)
Yates, Leonard Steven (801–30442)

Los Angeles Regional Office

ARE Investment Advisory, Inc. (801–32076)
Adu, Charles Taylor (801–25254)
Advanced Research Investments, Inc. (801–21960)
American Planning Group Counsulting (801–16958)
Argus Investment Management, Inc. (801–13142)
Armstrong, Richard Charles (801–27202)
Bartnick, Stanley Joseph (801–25872)
Blodgett, Julian Eric (801–28970)
Bode, Robert Rutherford (801–25995)
Boulet, Baxter Joel (801–26024)
Braid & Associates (801–20901)
Busch, Timothy R., J.D., P.C. (801–18259)
California Financial Planning (801–20859)
California Fund Timing Service /CA/ (801–31040)
Cambier, James Thomas (801–28972)
Cambridge Group, Inc. /CA/ (801–23419)
Capital Appreciation Investments (801–19816)
Capital Financial Planners, Inc. (801–23438)
Carlisle, Jay Freeborn (801–27348)
Cato Fund Switch Method (801–23285)
Century Financial Alternatives, Inc. (801–21983)
Chirpka, Gerald (801–18780)
Choy, Daniel Tong Myung (801–23367)
Clark, James Leslie (801–31106)
Congleton, David William (801–26210)
Cooper Cohen, Inc. (801–24668)
Cooper, Gary Allan (801–24829)
Coordinated Financial Management, Inc. (801–20838)
Coyne, Patrick (801–22202)
Cullen, Michael Shane (801–24349)
Dacquisto, John Francis (801–21348)
Dewilder, James Frederick (801–18450)
Diehl & Co. (801–18651)
Discovery Asset Management, Inc (801–30334)
Drew, Roy Pierce (801–23435)
EK Capital Management, Inc. (801–23385)
EPC Investment Services, Inc. (801–17369)
Equity Engineering, Inc. (801–15256)
Equity Shield Investment Corporation, Inc. (801–29979)
FSK Realty Services, Inc. (801–28354)
Fassett, Hugh Gardner (801–07048)
Favero, Dennis Vincent (801–22129)
Finney, Joseph Claude (801–21426)
First Palo Alto Advisors, Inc. (801–11164)
Fund Management Group, Inc. (801–17029)
Futurevalue Financial Corp. (801–25077)
Gadberry, Randall Keith (801–30910)
Garzon, Joseph Henry (801–24602)
Geiger, Anton Carl (801–15911)
Gillis, Paul Wilson, Jr. (801–23706)
Goldberg, Donald (801–25453)
Goldman, Daniel Carter (801–20719)
Goldstein, Paul Robert (801–31134)
Hamilton Group Financial Services Corp. (801–19610)
Hamlin, Stephen Paul (801–25449)
Hara, Fusako (801–27184)
Heilig, Tad Martin (801–27017)
Heitzenrader, Kenneth D. & Associates (801–22173)
Hellman, H.S. (801–23389)
Henley, Lawrence R. Murray (801–25615)
Hicks, Alan Ainsley (801–17303)
Hicks, James Everett (801–21976)
Higgins, Jeffrey Paul (801–27244)
ISI Corp. /CA/ (801–10045)
Integrated Assets Services Corp. (801–24174)
Intervest Financial Services Corp. (801–21916)
Investacorp International, Inc. (801–20484)
Investment & Tax Management, Inc. (801–16643)
Jabbari, Ali (801–32205)
Jenny, Hans H. (801–31077)
Johnson, Ann Edmiston (801–12181)
Johnson Capital Management, Inc. (801–18509)
Jones, David Edward, Jr. (801–27312)
Jones, Douglas Warren (801–26356)
Jones, Russell Ward (801–23780)
KG Associates (801–26892)
Kambourian, Patrick Kaye (801–28544)
Kanter, Larry Jay (801–26546)
Kerns, Charles David (801–23019)
Kerr, James Bancroft, II (801–23985)
Kiriaze, John Alexander (801–23060)
Kline, Frederick Hays (801–11804)
Larson, John William (801–27518)
Lees, Mel Financial Planning Corp. (801–24959)
Leisure Properties, Inc. (801–25631)
Letterman Transactions Services, Inc. /CA/ (801–19833)
Levy, Allan Jerry (801–26012)
Lewis, Craig Grubb (801–27002)
Loftus, Ronald Robert (801–24018)
Mandel Financial Group, Inc. (801–21841)
Marks, Alan (801–30044)
Martin, Hugh & Co. (801–14431)
Martindale, Judith Ann (801–20659)
Mass Financial Group /AZ/ (801–22226)
Maximillian, Xaiver Veritos (801–09406)
Maybury, Richard James (801–15306)
McCarville & Co. (801–26276)
McEwen, Laurence Bishop, Jr. (801–24752)
McGregor, Arthur Pardoe (801–17594)
McLucas, Charles Joseph, Jr. (801–26885)
Meadows, Jesse Winfield Taylor (801–30997)
Megacycles, Inc. (801–23470)
Meeks, Kirke Stanley (801–21755)
Merrill, Luther, Kalis & Co., Inc. (801–25606)
Metro Dyne Financial Services, Inc. (801–23566)
Miles, Art Young (801–20785)
Miller, Jack McLaughlin (801–26573)
Mix, Bernard John (801–24894)
Mohr, Melvin Eugene (801–26361)
Monytrends, Inc. (801–21774)
Munsinger, Harry Lee (801–28351)
Newport Capital Management (801–10512)
Newport Center Financial & Insurance Services, Inc. (801–24035)
Newport Research Services, Inc. (801–15071)
Opportune, Inc. (801–31573)
Pacific Realty Advisors (801–15808)
Padolsky, David Robert (801–23884)
Park, Ronald Moo Soo (801–23883)
Paule, Michael Louis (801–24908)
Peeler, Arlene Francis (801–24477)
Pennell, Nielsen & Associates (801–27010)
Pensions Plus, Inc. (801–26162)
Quantum Investment Corp. (801–28032)
R&A Financial Services, Inc. (801–27692)
RWT, Inc. (801–29140)
Realm Financial Services (801–25096)
Resource Planning Corp. (801–17539)
Richards, Seth Jr. (801–25607)
Roberts, Kenneth Alan (801–25009)
Sanders, Jack Richard (801–25530)
Sandler, Larry Alan (801–28258)
Schmidt, R.D., Inc. (801–17080)
Secure Unique Investments, Inc. (801–21298)
Semloh Financial, Inc. (801–17790)
Sharma, Rajiv (801–18247)
Shasta Financial Planning Consultants (801–22788)
Sherman, L.F. & Company, Inc. (801–29517)
Simes, Colin Doran (801–26919)
Singleton, Richard Lee (801–20424)
Smathers, F.G. & Company, Inc. (801–10619)
Smith, Karl Gregory (801–21488)
Snyder, Richard Edward (801–29562)
South Coast Portfolio Management (801–29319)

Spanier, Michael Robert (801–22994)
Staaf, Jacquelyn Christine (801–24417)
Stainsby & Associates, Ltd. (801–30513)
TN Associates, Inc. (801–25297)
Taylor, Benny Frank (801–23398)
Tommila, Peter John (801–25720)
Tuthill Ltd., International (801–29714)
Tuttle, J. Baker Corp., International (801–15205)
Tuttle & Co., Inc. (801–29715)
Twentyman, Judith Ann (801–26552)
Universal Growth Funds, Inc. (801–18866)
Van Houten, James Alan (801–20321)
Vanderzwaag, Andrew Jr. (801–27343)
Voight, Wayne Leroy (801–22851)
Volstead, Daniel Lee (801–20612)
Walsh, John R. (801–24742)
Walsh, Robert F., Inc. (801–23907)
Walson, Ralph Barry (801–08812)
Walthall & Walthall Securities Corp. (801–21117)
Wealth Resource Management, Inc. (801–19021)
Weil, John B. & Associates, Inc. (801–17047)
Welch, D.J. (801–27302)
Werth, Harlan Edward (801–24503)
Weston, Daniel P. (801–1221)
Wexler, Mark Ian (801–26602)
Whitaker, Walter Claiborne (801–26874)
Wilkinson, Thomas Roy (801–29946)
Wilson, David Ward (801–29916)
Woodley, Donald Robert (801–19917)
Wyckoff & Neil (801–23888)
Yeager, William Emer (801–28506)
Young, Skip Inc. (801–16907)

New York Regional Office

ARP Investment Advisory, Inc. (801–28830)
Aim Management, Inc. (801–09715)
Asset Design Group, Inc. (801–22004)
Asset Management Associates of Medford, Inc. (801–27978)
Associated Planning Group Registered Investment Advisors (801–23642)
Baird, Glen Taylor (801–20950)
Bandler, James Edwin (801–17214)
Barnett Investors Group, Inc. (801–20140)
Blackhill Capital, Inc. (801–32051)
Bonora, John Lee (801–30397)
Borchert, William George, Jr. (801–27557)
Britten Network Corp. (810–28226)
Brown & Riker, Inc. (801–15678)
Buckingham Investment Corp. (801–30420)
Cammarota, Michael Charles (801–26533)
Cartwright Capital Management, Inc. (801–29226)
Changebridge Group, Inc. (801–23228)
Chin, Trevor Alexander (801–27700)
Christman, Robert Andrew (801–27486)
Clain & Co., Inc. (801–27039)
Clayman, Elaine (801–24947)
Cohen, Joshua David (801–30280)
Comprehensive Asset Protection, Inc. (801–29236)
Comprehensive Financial Planning Corp. (801–31436)
Creative Retirement Planning, Inc. (801–31964)
Crossman, Thaddeus Corp. (801–22349)
Curylo, John Paul (801–26591)
Difelice, Ralph D. (801–25170)
Digest of Advices, Inc. (801–00038)
Diversified Financial Planners, Inc. (801–28545)
Donovan, Thomas Bryan (801–22423)
Douglas, Howard Jeffrey (801–27869)
Dudley & Co. (801–30300)
Dugan, Leo P. (801–25188)
Duggan Associates, Inc. (801–23615)
EQSF Associates, Inc. (801–27792)
Eichel, Martin Alexander (801–28172)
Emerson Associates (801–26889)
Engelhart, Eric Jay (801–28862)
Fields, Joseph Charles, Jr. (801–26733)
Financial Blueprints, Inc. (801–26077)
Financial Planning Associates /NJ/ (801–22614)
First Financial Profiles, Inc. (801–27961)
First Meridian Planning Corp. (801–21603)
Frank, Joseph Donald (801–27553)
Free Market Advisors, Inc. (801–27704)
Fund Management Group, Ltd. (801–30368)
Futures Trading Group International, Inc. (801–21432)
GFO Corp. (801–26840)
Gladstone Securities, Inc. (801–28276)
Glassman, Jay Toby (801–23737)
Gleason, Donald Robins (801–26357)
Greenwell, W., Inc. (801–13462)
Halford, Smith Associates, Inc. (801–14691)
Harmonic Research, Inc. (801–23764)
Harrison, Louise Ann (801–26291)
Helinka, Ellen Marie (801–24143)
Higgins Advisory Group, Inc. (801–27311)
Hodgess, Gilbert Ray, II (801–27954)
Hoffman, Steven Howard (801–26585)
Holzer, Vincent Frank (801–25157)
Hughes, Reese Alan (801–24129)
IPC Asset Management, Ltd. (801–27962)
Independent Investment Advisory Corp. (801–24794)
Insight Investors (801–19013)
International Investments Management, Inc. (801–25979)
Intersource Associates, Inc. (801–26729)
J&L Financial Services, Inc. (801–27623)
Kritzler, Kaete (801–27871)
Keith, Michael (801–20940)
Kyme, Charles Andrew (801–23461)
Lauria, Guerin, Horowitz Planning Group, Ltd. (801–203)
Lavigne, Douglas E. (801–26169)
Levy, Daniel Robert (801–19240)
Long Island Portfolio Management Co., Inc. (801–27789)
Loud Consulting Corp. (801–08611)
Lowe, Kenneth William (801–16791)
Luciano Advisory Group, Inc. (801–32229)
Lyon Research Corp. (801–29289)
MEK Commodities, Inc. (801–19733)
MSI Advisory Services, Inc. (801–23377)
Malvin Securities, Inc. (801–24092)
Mangini, James Vincent, Jr. (801–22274)
Marketamerica Group, Inc. (801–27178)
Martel, Chanon & Co., Inc. (801–23426)
Mitchel, Feinglas, Inc. (801–21172)
Monahan, Gerald Francis (801–23138)
Morgan, Alexander James (801–20113)
Nalven, Ronald L. (801–26451)
Neimark, Philip J. Financial Publishing (801–25089)
Neumann, Randy Robert (801–16667)
Nichols, Bruce David (801–22913)
Oakes, Joseph J., III (801–27338)
Oaktree Equity Group, Inc. (801–29556)
O'Daly, Michael Patrick (801–25905)
O'Higgins, Michael Bernardo (801–13770)
Osprey Management Corp. (801–28195)
PGC Asset Management, Inc. (801–29856)
Paribas Asset Management, Inc. (801–09042)
Performance Evaluation Resources, Inc. (801–29208)
Pescatello, M. & Co., Inc. (801–09134)
Picciuto, Anthony (801–27420)
Plan Management Systems, Inc. (801–18919)
Plevin, Gerald Martin (801–31319)
Private Asset Management Group, Inc. (801–16970)
Professional Analytics, Inc. (801–21758)
Puryear, Milton E. (801–18828)
Raoof, Faheem Jamal (801–23132)
RLB Financial Advisors, Inc. (801–27313)
Rodriguez, Rolenson Julio Fernado (801–24044)
Roll, Peter B., Inc. (801–10190)
Rook, Larry Charles (801–29043)
Ronney Pace, Inc. (801–16945)
Rutter, R.L. & Co., Inc. (801–18607)
SSI Investors, Ltd. (801–19881)
Silverman & Devine Associates (801–28214)
Selig, Alkon Joy (801–11171)
Shapiro, Carl (801–17227)
Sisco Management, Inc. (801–22113)
Slatnick, Charles Robert (801–25024)
Smith, Leonard J. Resource Planning Associates, Ltd. (801–26298)
Solomon, Jack Leonard (801–29598)
Smatlak, William Charles (801–31382)
Stornelli Investors Services, Inc. (801–15892)
Stratford Investors Management, Inc. (801–16204)
Stueber, Charles Frederick, Jr. (801–22284)
Summit Advisors, Inc. (801–18021)
Sussman, Robert Alan (801–23294)
Taibleson, James Alan (801–23627)
Tanger, S.B. & Co., Inc. (801–22762)
Taylor, Joseph Zachary, Jr. (801–22177)
Technological Investors Management Corp. (801–03103)
Trilogy Corporate Associates (801–28626)
Turoff, Allan J. (801–26905)
Trivisani, Anthony Robert (801–29232)
University Applied Management Consultants, Inc. (801–05864)
Ventura, William John (801–26636)
WG Advisors, Inc. (801–27953)
Waldman, Richard Lucky (801–26159)
Waldman, Barlow Associates, Ltd. (801–23418)
Walter, A.A. & Co., Inc. (801–27579)
Walter, Thomas Allan, CPA (801–28614)
Warlick & Baker, Inc. (801–17907)
Weber, Jody Marie (801–25033)
Weinberg, Alan Ethen (801–14746)

Philadelphia Regional Office

Advantage Investments Corp. (801–28557)
American No Load Mutual Fund Advisers (801–27014)
Andrews, J. Robert (801–15927)
Carhart Associates, Inc. (801–15316)
Chester, Lawrence Frederick, Jr. (801–27859)
Cohn, Robert (801–20395)
Coleman, Dennis Scott (801–18996)
Columbia Financial Planning, Inc. (801–20610)
Couch Securities Corp. (801–22186)
Covert, Harold M. & Associates, Inc. (801–16409)
Darrell, John Stewart & Co. (801–12562)
Decision Science, Inc. (801–24286)
DeSanto, David A. & Associates Advisory (801–26998)
Dorset Financial Services Corp. (801–16723)
Downs, Charles Fuller (801–26732)
Expert Investment Advisory Services, Inc. (801–31421)

Financial Planning Corp. of America (801–20606)
First American Financial Consultants, Inc. (801–25305)
First Eastern Investment Corp. /MD/ (801–19030)
First Financial Group, Ltd. (801–27295)
Frank, James Francis (801–28224)
Gibson, Tyrone (801–27004)
Giordano, Bruno Antonio (801–28116)
Hanwal Corp. (801–27520)
Hendin, Richard Bryan (801–17909)
Integrated Benefits Services, Inc. (801–29637)
Jaso, Joseph John, Jr. (801–26601)
Keller International, Inc. (801–33488)
Klander, George (801–24728)
Knowles & Hazlett, Ltd. (801–16077)
Lang, Jeffrey William (801–21973)
Leland, Marc E. & Associates, Inc. (801–21787)
Mercer, Charles Victor (801–24239)
Money Concepts Financial Planning Center (801–23990)
Montex Financial Group, Inc. (801–23901)
Old Dominion Financial Corp. (801–30752)
O'Neill, James David (801–25045)
Parsons, Leslie Garland (801–24344)
Performance Growth, Inc. (801–20466)
Personal Financial Planning, Inc. /VA/ (801–21485)
Personal Financial Planning Group, Inc. (801–24366)
Phillips, Alan Michael (801–12638)
Phillips, Albert (801–12639)
Quaestor Corp. (801–26114)
Reinbergs, Modris (801–28017)
Roberts, Failes, McMichael & Speece (801–26099)
Rorro, Thomas A. Enterprises (801–16623)
Sandler, Richard Elmer (801–21223)
Schwartzbach, Saul Marvin (801–19438)
Security Financial Services, Inc. (801–21484)
Sharkey & Associates (801–22351)
Singer, Melvin C. (801–24970)
Stock Analysis (801–24050)
Stokely, Hugh Lawson (801–13852)
Sutherland, Jerry Duane (801–24324)
Turner, Charles Hawthorne (801–21013)
Tyson, Norman Eugene (801–28949)
Uttmark, Geoffrey Francis (801–26631)
Vandeline Investment Planning, Inc. (801–25163)
Vertices Financial Group, Inc. (801–21655)
Wagner, Robert Eugene (801–26236)
Wall, Ronald Lynn (801–24873)
Washington Square Advisors, Inc. (801–23458)
Wilen Management Corp. (801–21673)
Wood, Kevin Lynn (801–27750)

Seattle Regional Office

Adams, Charles Walton (801–31465)
Apperson, Rawlins (801–19272)
Bright, William Hunter, III (801–17843)
Brokerage Advisory Service & Information Corp. (801–24180)
Clark, G.F. Co., Inc. (801–22718)
Cole, George (801–19062)
Comprehensive Financial Services, Inc. (801–18429)
DeRosier, Richard William (801–23692)
Eberle, Peter William (801–25704)
Fortune Management Corp. (801–23806)
Front Street Financial Services, Inc. (801–25411)
Hager, Bruce Allan (801–31328)
Hoath, Leonard Carl (801–24731)
Investment Capital Corp. (801–26231)
Leggett, Kenneth Robert (801–24058)
Mulligan, John J. (801–22721)
Outlook, Inc. (801–30638)
Papworth, Dale Mack (801–20849)
Performance Capital Corp. (801–20851)
Planvest Financial Planning, Inc. (801–16769)
Santi, Ronald James (801–21821)
Sweeny, Dan & Associates, Inc. (801–20878)
Synergy Management, Inc. (801–18324)
Ullrich, Kenneth Albert (801–18728)
Williamson, Robert Ratrick (801–24040)
Winkler, J.H & Co. (801–16708)
Wyman, Charles Mahan, III (801–17590)
Zeff, Harris Richard (801–21727)

Foreign Advisers

BT Australia HK, Ltd. (801–27901)
BT Australia, Ltd. (801–27911)
Bolton Tremblay, Inc. (801–00152)
Daewoo Research Institute (801–21658)
Daiwa Securities Research Institute, Ltd. (801–27177)
London Trading Co., Inc. (801–32467)
Swanson, Barry Ernest (801–27655)

[FR Doc. 90–2021 Filed 1–29–90; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–27640; File No. SR–NASD–89–57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Rule Change Relating to NASDAQ/National Market System Issuer Fees

The National Association of Securities Dealers, Inc. ("NASD") submitted on December 5, 1989, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, a proposed rule change to require that the issuer of each security designated for inclusion in the NASDAQ/National Market System pay an annual participation fee of $2,000 in addition to the annual fee already in Schedule D of the NASD By-Laws.[3]

Notice of the proposed rule change, together with the substance of the terms of the proposed rule change, was given by the issuance of a Commission release (Securities Exchange Act Release No. 27544, December 18, 1989) and by publication in the **Federal Register** (54 FR 52866, December 22, 1989). No comments were received with respect to the proposed rule change.

The NASD stated that the purpose of the fee is to support the continued expansion and technological enhancement of the NASD's market surveillance system and an increase in the NASD's surveillance staff. The NASD also states that it plans to use the increased fee revenue to assist it in its efforts to provide additional services for NASDAQ/National Market System issuers, to heighten investor interest in the NASDAQ/National Market System securities and to increase efforts to obtain state registration exemptions for NASDAQ/National Market System securities.

Upon review of the NASD's statement of the purpose of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A(b)(5),[4] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the NASD operates or controls. The fee imposed is reasonable and will be used by the NASD to assist the self-regulatory organization in fulfilling its duties and obligations imposed by the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change, SR–NASD–89–57, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: January 22, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–2019 Filed 1–29–90; 8:45 am]
BILLING CODE 8010–01–M

[File No. 500–1]

Order of Suspension of Trading; Bolar Pharmaceutical Co., Inc.

January 25, 1990.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the recent public disclosure that certain false documents were submitted to the Food and Drug Administration (FDA) in connection with Bolar Pharmaceutical Co., Inc.'s Abbreviated New Drug Application (ANDA) 71–845. Questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, the effect of the falsity of these documents on the ANDA and the effect that any

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240. 19b–4 (1989).

[3] Schedule D, Part IV, Section B.1., *NASD Securities Dealers Manual,* CCH paragraph 1815 at 1576.

[4] 15 U.S.C. 78o–3(b)(5).

[5] 15 U.S.C. 78s(b)(2) (1982).

change in the status of the ANDA would have on the financial position of the company. The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the Securities of Bolar Pharmaceutical Co., Inc.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Bolar Pharmaceutical Co., Inc., on the American Stock Exchange, over-the-counter or otherwise, is suspended for the period from 9:30 a.m. (est) on January 25, 1990 through 11:59 p.m. (est) on February 3, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2065 Filed 1-29-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9050]

Issuer Delisting; Application to Withdraw from Listing and Registration; Hudson Foods, Inc., Class A Common Stock, $.01 Par Value; 14% Convertible Subordinated Debentures Due 2008; 8% Convertible Subordinated Debentures Due 2006

January 24, 1990.

Hudson Foods, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The securities were listed and admitted to trading on the New York Stock Exchange, Inc. ("NYSE") on December 6, 1989. In order to avoid the direct and indirect costs and the division of the market resulting from dual listing on AMEX and NYSE, all officers of the Company were authorized and directed to take or cause to be taken all actions necessary or advisable to delist and suspend the trading of the securities on AMEX upon the admission of the securities to trading on the NYSE.

Any interested person may, on or before February 14, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2066 Filed 1-29-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17317; 812-7416]

Community Investment Partners, L.P., et al.; Notice of Application

January 22, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

Applicants: Community Investment Partners, L.P. (the "Partnership") and CIP Management, L.P. (the "Managing General Partner").

Relevant Act Sections: Order requested under section 6(c) that would grant an exemption from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order that would determine that (i) the Independent General Partners (as defined below) of the Partnership would not be "interested persons" of the Partnership, the Managing General Partner, Edward D. Jones & Co., L.P. ("Jones"), or The Jones Financial Companies, a Limited Partnership ("JFC"), solely by reason of being general partners of the Partnership and co-partners of the Managing General Partner, and (ii) persons who become limited partners (the "Limited Partners") of the Partnership and who own less than 5% of the limited partnership interests in the Partnership would not be "affiliated persons" of the Partnership, any other Limited Partner, any of the Individual General Partners (as defined below), the Managing General Partner, Jones, or JFC solely because such Limited Partners are partners of the Partnership and any of such other persons are partners with one another in the Partnership.

Filing Date: The application was filed on October 25, 1989 and was amended and restated on January 19, 1990.

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 Applicants 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 19, 1990, and should be accompanied by proof of service on the Applicants, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Daniel A. Burkhardt, Edward D. Jones & Co., 201 Progress Parkway, Maryland Heights, Missouri 63043.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847 or Max Berueffy, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a recently formed limited partnership organized under Missouri law that will be governed by an Amended and Restated Certificate of Agreement of Limited Partnership (the "Partnership Agreement"). The Partnership will elect to be a business development company pursuant to section 54(a) of the Act. Therefore, the Partnership will be subject to sections 55 through 65 of the Act and to those sections of the Act made applicable to business development companies by section 59 thereof. The Partnership will terminate no later than December 31, 2005 (subject to the right of the Individual General Partners to extend the term for up to two additional two-year periods). The Partnership has been organized as a limited partnership because applicants believe that the partnership form is the appropriate investment vehicle for a closed-end entity of limited duration that will make a limited number of investments.

2. The Partnership has filed a registration statement on Form N-2 under the Securities Act of 1933 with

respect to a "best efforts" offering by the Partnership of up to 160,000 (subject to a minimum requirement of 40,000) units of limited partnership interest in the Partnership (the "Units"). Jones, a registered broker-dealer, will act as the selling agent for the Units.

3. The General Partners of the Partnership will consist of the Individual General Partners and the Managing General Partner. The Individual General Partners will include (i) the Independent General Partners (natural persons who are not "interested persons" of the Partnership within the meaning of the Act); (ii) one Individual General Partner who is a natural person and who is an affiliated person of the Managing General Partner; and (iii) any natural person who becomes a successor or additional Individual General Partner. A majority of the General Partners will be Independent General Partners. The Partnership Agreement will provide that if at any time the number of Independent General Partners is less than a majority of the General Partners, then within 90 days thereafter, the remaining Individual General Partners shall designate and admit one or more successor Independent General Partners to restore the number of Independent General Partners to a majority of the General Partners.

4. The Managing General Partner is the managing general partner of the Partnership. The Managing General Partner is a limited partnership controlled by its general partner, CIP Management, Inc. ("CIP Inc."). CIP, Inc. is an indirect subsidiary of JFC, a Missouri limited partnership and the parent company of Jones. The Managing General Partner will perform the management and administrative services necessary for the operation of the Partnership pursuant to a management agreement. Under the Partnership Agreement, the Managing General Partner also will be responsible for making all decisions regarding the Partnership's investment portfolio, subject to the supervision of the individual General Partners, and for performing other functions traditionally carried out by the investment advisor to a business development company. The Managing General Partner will be a registered investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

5. The Partnership will be managed by the Individual General Partners thereof, except for those specific activities for which the Managing General Partner will be responsible. The Individual General Partners will provide overall guidance and supervision of the Partnership and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the Act and the regulations thereunder on the non-interested directors of a registered investment company.

6. The Partnership Agreement will provide that the Individual General Partners may be removed; (i) For cause by the action of two-thirds of the remaining Individual General Partners; (ii) by failure to be re-elected; or (iii) with the consent of a majority-in-interest of the Limited Partners. The Partnership Agreement will also provide that the Managing General Partner may be removed; (i) by a majority of the Independent General Partners; (ii) by failure to be re-elected; or (iii) with the consent of a majority-in-interest of the Limited Partners.

7. The Limited Partners of the Partnership, who may include some employees of Jones, will have no right to control the Partnership's business, but may exercise certain rights and powers of Limted Partners under the Partnership Agreement, including voting rights and the giving of consents and approvals provided for the Partnership Agreement. The Limted Partners will be afforded all voting rights required by the Act. It is the opinion of Missouri counsel for the Partnership that the existence or exercise of these voting rights, in accordance with the terms and conditions thereof, will not subject the Limited Partners to liability as general partners under the Missouri Revised Uniformed Limited Partnership Act.

8. An insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been obtained as of the filing date of the application because: (i) The Partnership has been advised by counsel that the Units will constitute valid limited partnership interests in the Partnership and that subscribers to the Units will be limited partners of the Partnership entitled to all of the benefits of limited partnership under the Partnership Agreement and the Missouri Revised Uniformed Limited Partnership Act; (ii) based on the nature of the business to be conducted by the Partnership, the Partnership believes that the risk of liability for actions against the Limited Partners, including actions based on contract or tort claims, is remote; and (iii) the Partnership Agreement will obligate the General Partners to use their best efforts to take all action that may be necessary or appropriate to protect the limited liability of the Limited Partners. The Independent General Partners will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

9. Applicants believe that the distributions and allocations provided for in the Partnership Agreement are permissible under section 205 of the Advisers Act and under Section 15 of the Act and will rely on an opinion of counsel to that effect. Applicants do not request SEC review or approval of such opinion.

10. Applicants request that the Partnership and the Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent that the Independent General Partners would otherwise be deemed to be "interested persons" of the Partnership, the Managing General Partner, Jones, or JFC solely because such Independent General Partners are general partners of the Partnership and co-partners of the Managing General Partner. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exception for partners of an investment company.

11. Applicants also request that the order determine that any Limited Partners owning less that 5% of the Units of the Partnership will not be an affiliated person of the Partnership, any other Limited Partners , any of the Independent General Partners, the Managing General Partners, Jones, or JFC solely because such Limited Partner is a partner of the Partnership and any of such other persons are partners with one another in the Partnership. Section 2(a)(3) of the Act does not include corporate shareholders with less than a 5% ownership interest in the definition of affiliated person. There is no similar exclusion for limited partners. Applicants believe the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

Applicants' Conditions

If the request order is granted, Applicants agree to the following conditions:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an incorporated investment company registered under the Act.

2. Under the Partnership Agreement, the Partnership will be authorized to make in-kind distributions of portfolio securities to its Partners. The Partnership will not make any in-kind distributions of securities to its Partners until such time as the Partnership has obtained a non-action letter from the staff of the SEC or, alternatively, has obtained an order pursuant to section 206A of the Advisers Act permitting such distribution.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2020 Filed 1-29-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 19, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46711
Date filed: January 17, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 14, 1990
Description: Application of Dinamicos, S.A. De C.V., pursuant to section 402 of the Act and subpart Q of the Regulations applies for authority to provide charter air transportation of persons and accompanying baggage between points in the United States and points in Mexico and, subject to the applicable regulations of the Department of Transportation, between points in the United States and other points worldwide.

Docket Number: 46713
Date filed: January 17, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of United Parcel Service Co., pursuant to section 401 of the Act and the terms of Order 90-1-4, requesting the issuance of a new or amended certificate of public convenience and necessity authorizing UPS to engage in scheduled foreign air transportation of cargo (property and mail) between the United States and Japan.

Docket Number: 46716
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of USAir, Inc. applies pursuant to section 401 of the Act and in response to Order 90-1-4, for issuance of a new or amended certificate of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation of persons, property and mail on a nonstop basis: (1) Between Pittsburgh, Pennsylvania, and Tokyo, Japan; and (2) between Los Angeles, California and Tokyo, Japan.

Docket Number: 46717
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Pan American World Airways, Inc. pursuant to section 401 of the Act and in response to Order 90-1-4, applies for a Certificate of Public Convenience and Necessity to engage in scheduled foreign air transportation of persons, property and mail between Los Angeles, California and Tokyo, Japan and Los Angeles California, and Nagoya, Japan.

Docket Number: 46718
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Federal Express Corporation pursuant to section 401 of the Act and in accordance with Order 90-1-4, applies for issuance of an amended certificate of public convenience and necessity for Route 205-F, so as to authorize Federal Express to provide foreign air transportation of property and mail between a point or points in the United States, on the one hand, and Nagoya (or Fukuoka or Sapporo), Japan, as an additional coterminal point in Japan, on the other hand, subject to conditions.

Docket Number: 46719
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and in accordance with Order 90-1-4, requesting the issuance of a new or amended certificate of public convenience and necessity authorizing TWA to engage in scheduled foreign air transportation of persons, property and mail between the United States and Japan.

Docket Number: 46720
Date filed: January 19, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and in accordance to Order 90-1-4, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation on the U.S.-Japan segments.

Docket Number: 46721
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of American West Airlines, Inc. pursuant to section 401 of the Act and in accordance to Order 90-1-4, applies for a certificate of public convenience and necessity authorizing it to provide service between the terminal point Honolulu, Hawaii, on the one hand, and the terminal points Tokyo and Nagoya, Japan, on the other hand.

Docket Number: 46722
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Aloha Airlines, Inc. pursuant to section 401 of the Act and in accordance to Order 90-1-4, requests a certificate of public convenience and necessity to operate scheduled nonstop service for persons, property and mail between: (1) Honolulu, Hawaii and Tokyo, Japan; (2) Honolulu, Hawaii and Nagoya, Japan; (3) Guam/Saipan and Nagoya, Japan; (4) Honolulu, Hawaii and Fukuoka, Japan; and (5) Guam/Saipan and Fukuoka, Japan.

Docket Number: 46723
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 1, 1990

Description: Conforming Application of American Airlines, Inc. pursuant to section 401 of the Act and supbart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing service between Miami, Florida, and London, England.

Docket Number: 46724
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of World Airways, Inc. pursuant to section 401 of the Act and in accordance to Order 90–1–4, requests a certificate of public convenience and necessity for the foreign air transportation of cargo (property and mail) between Chicago, Illinois and Tokyo, Japan.

Docket Number: 46725
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Air Micronesia, Inc. pursuant to section 401 of the Act and in accordance to Order 90–1–4, applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Honolulu, Hawaii, on the one hand and points in Japan.

Docket Number: 46726
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Emery Worldwide Airlines, Inc. pursuant to section 401(d)(1) of the Act and in accordance to Order 90–1–4, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of property and mail between Fairbanks, Alaska and Tokyo, Japan.

Docket Number: 46727
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Hawaiian Airlines, Inc. pursuant to section 401 of the Act and in accordance to Order 90–1–4 requests a certificate of public convenience and necessity to authorize scheduled non-stop service for passengers, property and mail between Guam/Saipan and Nagoya, Japan and between Guam/Saipan and Fukuoka, Japan.

Docket Number: 46728
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Hawaiian Airlines, Inc., pursuant to section 401 of the Act and in accordance to Order 90–1–4 requests a certificate of public convenience and necessity to authorize scheduled non-stop service for passengers, property and mail between Honolulu, Hawaii and Nagoya, Japan and between Honolulu, Hawaii and Fukuoka, Japan.

Docket Number: 46729
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and in accordance to Order 90–1–4, applies for a certificate of public convenience and necessity which would authorize it to provide scheduled, all-cargo service between the U.S. and Japan.

Docket Number: 46730
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and in accordance to Order 90–1–4, applies for a certificate of public convenience and necessity to provide scheduled, combination service between Kona and Maui, Hawaii and Tokyo, Japan; between Honolulu, Hawaii and Nagoya, Japan; and between Honolulu, Hawaii and Fukuoka, Japan.

Docket Number: 46731
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Continental Airlines, Inc., and Air Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests an amendment of their certificates of public convenience and necessity for Route 171 and Route 170, respectively, in order to authorize Continental/Air Micronesia to provide scheduled foreign air transportation of persons, property and mail between the United States coterminals Guam and Saipan, on the one hand, and Sapporo and Sendai, Japan on the other.

Docket Number: 46732
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Continental Airlines, Inc., pursuant to section 401 of the Act and in accordance to Order 90–1–4, requests a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between points in the United States, on the one hand, and points in Japan on the other.

Docket Number: 46733
Date filed: January 19, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Application of Northwest Airlines, Inc., pursuant to section 401 of the Act and in accordance to Order 90–1–4, applies for a certificate of public convenience and necessity which would authorize it to provide foreign air transportation of persons, property, and mail between Guam and Saipan, on the one hand, and Osaka and Naha, on the other.

Docket Number: 46592
Date filed: January 18, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 25, 1990
Description: Amendment No. 1 to the Application of American Airlines, Inc., pursuant to section 401 of the Act and in accordance with Order 90–1–4, requests amendment to seek the following U.S.-Japan routes:

1. Between Chicago, Illinois, and Tokyo, Japan.
2. Between San Jose, California, and Tokyo, Japan.
3. Between Los Angeles, California, and Tokyo, Japan.
4. Between Chicago, Illinois, and Nagoya, Japan.
5. Between San Jose, California, and Nagoya, Japan.
6. Between Los Angeles, California, and Nagoya, Japan.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90–1977 Filed 1–29–90; 8:45 am]
BILLING CODE 4910–62–M

Airport Capacity Funding Advisory Committee; Meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Airport Capacity Funding Advisory Committee Meeting.

SUMMARY: Notice is hereby given of a meeting of the Airport Capacity Funding Advisory Committee.

DATE: The meeting will be held February 22, 1990, from 9 a.m. to noon and 1 p.m. to 4 p.m.; and on February 23, from 9 a.m. to noon.

ADDRESS: The meeting will be held in Room 6246–6248, DOT Building, 400 7th St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3208.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II, notice is hereby given of a meeting of the Airport Capacity Funding Advisory Committee to be held February 22 and 23, 1990, in Room 6246–6248 DOT Building, 400 7th St., SW., Washington, DC.

The agenda for this meeting is as follows: A discussion of issues in order to formulate recommendations primarily related to passenger facility charges.

Attendance at the February 22 and 23 meetings is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact Frank C. Emerson in the Office of Aviation Policy and Plans (APO), 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–3208.

Any member of the public may present a written statement to the Commission at any time.

Issued in Washington, DC, on January 24, 1990.

Michael C. Moffet,

Associate Administrator for Policy, Planning, and International Aviation.

[FR Doc. 90–2050 Filed 1–29–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

Intent To Prepare Environmental Impact Statement; Centennial Airport, Denver, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the FAA announces: (1) The FAA, acting as lead agency, intends to prepare Draft and Final Environmental Impact Statements (EIS) concerning a proposal by the Arapahoe County Public Airport Authority to extend runway 10/28 at Centennial Airport and (2) that the Federal EIS scoping process will consist of a time period for interested agencies and persons to submit written comments as to their concerns and topics which they believe should be addressed in the Draft EIS.

DATE: In order to be considered, written comments must be received on or before March 15, 1990. Send comments to: Mrs. Barbara Johnson, Federal Aviation Administration, 5440 Roslyn, Suite 300, Denver, Colorado 80216–6026, Telephone: (303) 286–5527.

Questions concerning the draft EIS or the process being applied by the FAA in connection with this project should also be directed to Mrs. Barbara Johnson.

ADDRESSES: An Environmental Assessment on the proposal is available to anyone wishing to review it during regular business hours at the following locations.

Federal Aviation Administration, 5440 Roslyn, Suite 300, Denver, Colorado.
Arapahoe County Airport Authority, Administration Office, 7800 S. Peoria St., Englewood, Colorado.
Castlewood Library, 6739 S. Uinta, Englewood, Colorado.
Douglas County Public Library, Phillip S. Miller Branch, 961 S. Plumcreek Road, Castle Rock, Colorado.
Parker Library, 19801 E. Main Street, Parker, Colorado.

SUPPLEMENTARY INFORMATION: Information, data, views and comments obtained in the course of the scoping process may be used in the preparation of the draft EIS. The purpose of this notice is to inform the public and state, local and Federal governmental agencies of the fact that a draft EIS will be prepared and to provide those interested in doing so with an opportunity to present their views, comments, information, data, or other relevant observations concerning the environmental impacts related to implementation of this proposal.

The proposed development includes the following items:

(1) Extention of runway 10/28 from 4903 feet to 7000 feet in length and upgrading of associated taxiway and lighting facilities,

(2) Strengthening the pavement of runway 10/28 from 12,500 Lbs. (single wheel gear) to 30,000 Lbs. (single wheel gear), and

(3) Widening of runway 10/28 from 60 feet to 75 feet.

Issued in Seattle, Washington on January 18, 1990.

Edward G. Tatum,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Seattle, Washington.

[FR Doc. 90–2049 Filed 1–29–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Salt Lake County, UT

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 (EIS) will be prepared for a proposed highway project in Salt Lake County, Utah. If the study and analysis conclude that all appropriate FHWA/UDOT criteria for a Finding of No Significant Impact (FONSI) are met then the document may be converted from an EIS to a FONSI.

FOR FURTHER INFORMATION CONTACT: Mr. Donald P. Steinke, U.S. Department of Transportation, Federal Highway Administration, P.O. Box 11563, Salt Lake City, Utah 84147, Telephone (801) 524–5141; or R. James Naegle, Utah Department of Transportation, 4501 S. 2700 W., Salt Lake City, Utah 84119, Telephone (801) 965–4160; or Gene Sturzenegger, Utah Department of Transportation, 2060 S. 2400 W., Salt Lake City, Utah 84104, Telephone (801) 975–4801.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with Utah Department of Transportation, will prepare an EIS on a proposal to widen 700 East to a 106-foot right-of-way from 9400 South to approximately 7700 South (located in Sandy City), curving onto Husky Highway, and continuing on 900 East to approximately Fort Union Boulevard (located in unincorporated Salt Lake County), for a distance of approximately 3 miles. The existing right-of-way for the roadway varies from 66 to 106 feet.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demand, and increased safety measures. Alternatives under consideration include (1) A No Action alternative; (2) A low-cost Transportation System Management alternative (intersection improvements, traffic signal coordination, etc.); and (3) A Build alternative; widening the existing highway to a uniform 106 foot right-of-way, with six travel lanes, curb and gutter, park strip and sidewalks on both sides of the road. Incorporated into and studied with the build alternative will be design variations of grade and alignment which would reduce environmental impact in sensitive areas. Major intersection improvements will also be considered to reduce existing operational and safety concerns.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held. Informal informational public meetings will be held as necessary during the project development process. Public scoping meetings and a final public hearing will also be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that a 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 Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: January 16, 1990.

Donald P. Steinke,

Division Administrator, Salt Lake City, Utah.

[FR Doc. 90-1972 Filed 1-29-90; 8:45 am]

BILLING CODE 4910-22-M

Federal Aviation Administration

[Summary Notice No. PE-90-5

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the applications, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 19, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10) Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on January 23, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 20044.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.63(b) and (c) and 121.437(c).
Description of Relief Sought: To extend Exemption No. 2965, as amended, that allows pilots of petitioner's member airlines and any part 121 certificate holder to be issued an additional category and class rating to that person's pilot certificate, subject to certain conditions and limitations. Exemption No. 2965, as amended, will expire on April 30, 1990.

Docket No.: 19651.
Petitioner: Learjet Corporation.
Regulations Affected: 14 CFR 21.197.
Description of Relief Sought/ Dispostion: To Extend Exemption No. 4593A that allows petitioner to ferry aircraft between its facilities at Wichita, Kansas and Tucson, Arizona before completion of flight test, certification, and customer delivery.

Grant, January 17, 1990, Exemption No. 4593B

Docket No.: 23901.
Petitioner: General Motors Corporation.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/ Disposition: To allow certain aircraft to be flown with the flaps in the up position under specified conditions.

Grant, January 17, 1990, Exemption No. 5136.

Docket No.: 2510.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 63.39(b)(1) and (2) and 121.425(a)(2)(i).
Description of Relief Sought/ Disposition: To extend Exemption No. 4901 that allows part 121 certificate holders to train and check flight engineer candidates in the performance of the airplane preflight inspection using advanced pictorial means instead of the airplane. The exemption also permts parts 121 certificate holders and operators of part 63 flight engineer schools to complete training and checking of flight engineer applants in an appropriate simulator instead of taking that portion of the practical test in an airplane in flight.

Grant, January 17, 1990, Exemption No. 4910A.

Docket No.: 25702.
Petitioner: Braathens South American and Far East Airtransport A-S.
Sections of the FAR Affected: 14 CFR 21.197(c)
Description of Relief Sought/ Disposition: To allow operation of petitioner's aircraft under special flight permit with continuing authorization.

Grant, January 17, 1990, Exemption No. 5135.

Docket No.: 25824.
Petitioner: Mercy Medical Center Redding.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought/ Disposition: To allow petitioner's pilots to perform the preventive maintence function of removal and replacement of passenger seats in aircraft used in part 135 operations.

Grant, January 17, 1990, Exemption No. 5134.

Docket No.: 25934
Petitioner: Bill Morse.
Sections of the FAR Affected: 14 CFR 135.243(b)(3).
Description of Relief Sought/ Disposition: To allow petitioner to serve as pilot in command in day visual flight rule (VFR) conditions without having an instrument rating.

Grant, January 17, 1990, Exemption No. 5137.

Docket No.: 26006.

Petitioner: Beech Aircraft Corporation.

Sections of the FAR Affected: 14 CFR 47.69(b).

Description of Relief Sought/ Disposition: To allow us of a dealer's certificate outside the United States.

Grant, January 17, 1990, Exemption No. 5125.

[FR Doc. 90-2048 Filed 1-29-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 23, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0185.
Form Number: ATF F 5400.5.
Type of Review: Extension.
Title: Report of Theft or Loss of Explosives.
Description: Losses or thefts of explosives must, by statute, be reported within 24 hours of the discovery of the loss or theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.
Respondents: Businesses of other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Response: 1 hour, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 450 hours.
OMB Number: 1512-0190.
Form Number: ATF F 5100.11.
Type of Review: Extension.
Title: Withdrawal of Spirits, Denatured Spirits, or Wines for Exportation (Supplemental).
Description: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits and wines from internal revenue bonded premises, without payment of tax, for direct exportation, for transfer to a foreign trade zone, Customs manufacturers bonded warehouse or Customs bonded warehouse, or for use as supplies on vessels or aircraft.
Respondents: Businesses of other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 6,000 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-2062 Filed 1-29-90; 8:45 am]
BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27383, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Titan, Prince of Painters" (see list [1]) imported from abroad for the temporary exhibition without profit within the Untied States are of cultural significance. These objects are improted pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National gallery of Art in Washington, DC, beginning on or about October 28, 1990, to on or about January 27, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contracting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Dated: January 22, 1990.

Alberto J. Mora,
General Counsel.
[FR Doc. 90-2067 Filed 1-29-90; 8:45 am]
BILLING CODE 8230-01-M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. non-profit organizations for projects which are supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement prior to addressing inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces two projects to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions.

The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit institutions with counterpart institutions and organized groups in other countries. It gives high priority to project proposals that establish or promote linkages with American and foreign professional organizations.

Projects must feature an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

Programs focus on substantive issues of mutual interest. The Office's projects are intellectual and cultural, not technical. Each private sector activity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain their scholarly integrity and shall meet the highest professional standards. The participation of respected universities, chambers of commerce, and other major cultural institutions is encouraged.

Request for Proposals for Two Initiative Grant Projects

A. The U.S. Chamber of Commerce and the Role It Plays in the Development of Private Sector Enterprise

The Office of Private Sector Programs of the U.S. Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer a 3 week seminar/study tour for up to 14 newly elected directors, managers and professional staff members from Chambers of Commerce organizations in the Maghreb region of North Africa.

The project should be designed and executed to provide an indepth analysis of national, regional and local Chambers of Commerce organizations in the United States. The project should also provide opportunities for the delegation to meet with representatives from other private and public sector organizations that actively support and promote business development and entrepreneurship domestically and internationally. An ultimate goal of the project would be to develop and nurture linkages between U.S. and Maghreb organizations in efforts to expand and develop the role of private sector enterprise in the Maghreb. Delegates will be selected by USIS officers at American embassies in participating countries.

B. Middle Eastern Legislators Exchange Program

The Office of Private Sector Programs of the United States Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer two three-week seminars for newly elected legislators from North Africa, the Near East and South Asia to expose them to the concept of representational government, and its application to the Federal system in the United States. Six delegates will participate in each seminar. The project should introduce each group of legislators to the organization, structure, and functions of the three branches of government in an effort to provide an understanding of the values, institutions and practices of a democratic society. Delegates should be provided opportunities to meet with U.S. colleagues in both Houses of Congress, and with representatives of other public and private organizations that help to shape U.S. domestic and foreign policies. Delegates will be selected by USIS officers at American embassies in participating countries.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to support USIA goals abroad as well as to assist U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that projects involve USIS posts in the nomination of foreign participants with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or overseas in general accordance with the USIA program design.

Proposals should display sensitivity to translation and interpretation requirements, if any.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign audiences to various regions.

Institutions must submit sixteen copies of the final grant proposal.

If applying for funds to cover partial seminar costs, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events or short-term issues. In every case, a substantial rationale for such meetings must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered.

Upon receipt of a letter of interest in either or both of these projects, this office will send out a concept papers and grant application packages which include additional guidelines.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 25% cost-sharing must provide particularly strong justification even in order to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format which clearly displays cost-sharing support of proposed projects. Following is a sample of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc			
Total	$	$	$

USIA can provide approximately $80,000–$100,000 funding for each of these two programs: U.S. Chamber of Commerce Project and Middle Eastern Legislative Exchange Project.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than February 16, 1990, to the Office of Private Sector Programs at the address given below. Upon receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business March 16, 1990. Incomplete proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael E. Weider, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street, SW., E/P Room 220, Washington, DC 20547

Attention: U.S. Chambers of Commerce/ Maghreb Project

or

Middle Eastern Legislative Exchange Project

Dated: January 8, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 90–2032 Filed 1–29–90; 8:45 am]

BILLING CODE 8230–01–M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. non-profit organizations for projects which are supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement prior to addressing inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces two projects to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions.

The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit institutions with counterpart institutions and organized groups in other countries. It gives high priority to project proposals that establish or promote linkages with American and foreign professional organizations.

Projects must feature an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

Programs focus on substantive issues of mutual interest. The Office's projects are intellectual and cultural, not technical. Each private sector activity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain their scholarly integrity and shall meet the highest professional standards. The participation of respected universities, professional associations, and other major cultural institutions is encouraged.

Request for Proposals for Two Initiative Grant Projects

The Government and the Media

The Office of Private Sector Programs proposes the development of a program which will bring ten journalists and government media affairs officials from Francophone Africa to the United States for twenty-one days to give them a greater understanding of the theory and practice of the interaction between the government and the media in this country. A U.S. not-for-profit institution will design the program and select the American speakers. The participants will be nominated by United States Information Service personnel overseas and selected by the United States Information Agency (USIA). The primary goal of this project is to provide the participants with exposure to the interaction between the U.S. Federal and State Governments and the National and Local Media. The delegation will also be exposed to the philosophical and Constitutional underpinnings of a free media. They will be given the opportunity to observe and question U.S. counterparts in both seminar and work environments, and to offer comments based on their own experience. Each participant will have several years of experience in journalism, or corresponding experience in conducting media affairs for an African government.

Economic Development and Environmental Protection

The Office of Private Sector Programs proposes the development of a program bringing 10 Sub-Saharan African environmental policy makers and development planning officials to the United States for twenty-one days. The African delegation will meet with American specialists in Government and the private sector to discuss the institutions and systems put in place in this country to curb harmful environmental effects of industry and agriculture while maintaining productivity vital to economic development and growth. A U.S. not-for-profit institution will design the program and select the American speakers and site visits. The participants will be nominated by United States Information Service personnel overseas and selected by the United States Information Agency (USIA). The objective of this program is to introduce African policy makers to American efforts to encourage industrial and agricultural growth within a legal and practical framework which protects the environment from abuse.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to support USIA goals abroad as well as to assist U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that projects involve USIS posts in the nomination of foreign participants with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or overseas in general accordance with the USIA program design.

Proposals should display sensitivity to translation and interpretation requirements, if any.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign audiences to various regions.

Institutions must submit sixteen copies of the final grant proposal.

Upon receipt of a letter of interest in either or both of these projects, this office will send out concept papers and grant application packages which include additional guidelines.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 25% cost-sharing must provide particularly strong justification even in order to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format which clearly displays cost-sharing support of proposed projects. Following is a sample of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc			
Total	$	$	$

USIA can provide approximately $75,000 to $85,000 for each of these two programs: The Government and the Media and Economic Development and Environmental Protection.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than February 16, 1990, to the Office of Private Sector Programs at the address

given below. Upon receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business March 16, 1990. Incomplete proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael Ringler, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street SW., E/P Room 220, Washington, DC 20547

Attn: The Government and the Media

or

Attn: Economic Development and Environmental Protection

Dated: January 8, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 90-2031 Filed 1-29-90; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. non-profit organizations for projects which are supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement prior to addressing inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces one project to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions.

The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit institutions with counterpart institutions and organized groups in other countries. It gives high priority to project proposals that establish or promote linkages with American and foreign professional organizations.

Projects must feature an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

Programs focus on substantive issues of mutual interest. The Office's projects are intellectual and cultural, not technical. Each private sector activity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain their scholarly integrity and shall meet the highest professional standards. The participation of respected universities, professional associations, and other major cultural institutions is encouraged.

Request for Proposals for Two Initiative Grant Projects

Environmental Issues Seminar for Science Writers

The Office of Private Sector Programs proposes the development of a program which will bring 20 journalists and science writers from throughout the hemisphere together in a Latin American capital city for a week-long colloquium and study tour exploring international environmental issues. A U.S. non-for-profit institution will design the program, select North and Latin American environmental experts as speakers and panelists, and seek the cooperation of appropriate media organizations in the host city. The participants will be nominated by United States Information Service personnel overseas and selected by the United States Information Agency (USIA). The primary goal of this program is to provide a hemispheric forum for the consideration of environmental issues, and to stimulate useful international discussion on such issues. The language of the conference should be Spanish, with interpreting services provided to others as required.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to support USIA goals abroad as well as to assist U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that projects involve USIS posts in the nomination of foreign participants with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or overseas in general accordance with the USIA program design.

Proposals should display sensitivity to translation and interpretation requirements, if any.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign audiences to various regions.

Institutions must submit sixteen copies of the final grant proposal.

Upon receipt of a letter of interest in this project, this office will send out concept papers and grant application packages which include additional guidelines.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 25 percent cost-sharing must provide particularly strong justification even in order to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20 percent of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format which clearly displays cost-sharing support of proposed projects. Following is a sample of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total	$	$	$

USIA can provide approximately $75,000 for this project: Environmental Issues Seminar for Science Writers

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than February 16, 1990, to the Office of Private Sector Programs at the address given below. Upon receipt of a letter of interest, E/PI will forward the project

concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business March 16, 1990. Incomplete proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB # 31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael Ringler, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street SW., E/P Room 220, Washington, DC 20547: Attn: Environmental Issues Seminar for Science Writers.

Dated: January 8, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 90-2030 Filed 1-29-90; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. non-profit organizations for projects which are supportive of the aims of the Bureau of Educational and Cultural Affairs. Interested Applicants are urged to read the complete **Federal Register** announcement prior to addressing inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces a program to support the international exchange objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources through limited grants to non-profit U.S. institutions.

The Office is a networking instrument that serves to link the international exchange interests of U.S. private sector non-profit institutions with counterpart institutions and organized groups in other countries. It gives high priority to project proposals that establish or promote linkages with American and foreign professional organizations.

Projects much feature an international people-to-people component, have a professional and cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

Programs focus on substantive issues of mutual interest. The Office's projects are intellectual and cultural, not technical. Each private sector activity must maintain its nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain their scholarly integrity and shall meet the highest professional standards. The participation of respected universities and other major cultural institutions is encouraged.

Request for Proposals for Two Initiative Grant Projects

A. Project for Thai Members of Parliament

The Office of Private Sector Programs of the United States Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer a 3 week colloquium/study tour for 8–10 Members of Parliament from Thailand. Ideally, the project would take place before mid-April 1990, when the Thai National Assembly will begin its preparations for its May-to-July session, or in late August. It should be designed and executed to familiarize the participants with the workings of the U.S. Government, at all levels, using international trade policy as a case study. To that end, the project should include State and local government briefings and should focus on the accountability of representatives to their constituents, the domestic forces which may shape policy, and the interplay between the legislative and executive branches of government. An ultimate goal of the project would be to engender a more profound understanding of U.S. perspectives on international trade. Delegates will be selected by USIS officers at the American Embassy in Bangkok, Thailand.

B. Project for Young Korean Scholars

The Office of Private Sector Programs of the United States Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer a three-week colloquium/study tour for 10 young Korean scholars and intellectuals, including professors, writers, journalists (rather than students), to examine jointly with American scholars the history and current status of U.S.-Korean relations. In general, the project should address areas of misunderstanding concerning our post-World War II bilateral relationship. Ideally, this project will include a follow-up workshop in Seoul where two or three American scholars will meet with the Korean participants and other scholars to discuss possible joint exchange and research projects on these issues. Korean participants will be selected by USIS officers at the American Embassy in Seoul, South Korea.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective applicants:

Projects supported by the Office of Private Sector Programs are intended to support USIA goals abroad as well as to assist U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that projects that involve USIS posts in the nomination of foreign participants with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or overseas in general accordance with the USIA program design.

Proposals should display sensitivity to translation and interpretation requirements, if any.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign audiences to various regions.

Institutions must submit sixteen copies of the final grant proposal.

If applying for funds to cover partial seminar costs, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events or short-term issues. In every case, a substantial rationale for such meetings must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered.

Upon receipt of a letter of interest from institutions, this office will send out a concept paper and grant application package which includes additional guidelines.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 25% cost-sharing must provide particularly strong justification even in order to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs (salaries, benefits, other direct and indirect costs) which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format which clearly displays cost-sharing support of proposed projects. Following is a sample of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc			
Total	$____	$____	$____

USIA can provide approximately $75,000—$85,000 funding for each of these two programs: Project for Thai Members of Parliament and Project for Young Korean Scholars.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than February 16, 1990, to the Office of Private Sector Programs at the address given below. Upon receipt of your letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary materials, will be due by close of business March 16, 1990. Incomplete proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Dr. Gregory F. T. Winn, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street, SW., E/P Room 220, Washington, DC 20547; Attention: Project for Thai Members of Parliament or Project for Young Korean Scholars.

Dated: January 8, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 90-2029 Filed 1-29-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 20
Tuesday, January 30, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, February 1, 1990, See times below.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: 10:00 a.m.

1. *Adult Nightwear*

The Commission will consider options to address risks of burn injuries to persons 65 years of age and older associated with nightwear (robes, nightgowns, and pajamas).

2. *Voluntary Standards Status Report*

The staff will brief the Commission on the status of voluntary standards projects.

3:00 p.m.

3. *Hair Dryer Petition CP 89-3*

The staff will brief the Commission on petition CP 89-3 from the Michele Snow Foundation to require detection circuit interrupters for hand-held hair dryers in order to protect against electrocution if the dryer falls into a bathtub or other accumulation of water, whether the switch that operates the hair dryer is in the on or off position.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

Dated: January 25, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-2218 Filed 1-26-90; 1:50 pm.

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

January 24, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: January 31, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Note: The agenda format has been revised to include new agenda prefixes: CAH, CAE, H, E, PR, and PC. All parts of the consent agenda will continue to be called and voted on as a single group. Consent items which are called separately at the request of a member of the Commission will be called at the end of that part of the regular agenda for the applicable substantive area (for example, CAH-5 would be considered after the last regular Hydro agenda item).

Consent Agenda—Hydro, 908th Meeting—January 31, 1990, Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 10787-001, Pacific Hydro, Inc.

CAH-2.
Project No. 4632-007, Clifton Power Corporation

CAH-3.
Project No. 10846-001, Alpine Hydroelectric Company

CAH-4.
Project No. 10464-001, Long Lake Energy Corporation
Project No. 10551-002, City of Oswego, New York

CAH-5.
Project No. 2520-001, Great Northern Paper Company

CAH-6.
Project No. 9874-001, Michiana Hydro Electric Power Corporation

CAH-7.
Project No. 3195-030, Sayles Hydro Associates

CAH-8.
Omitted.

CAH-9.
Project No. 3344-022, Town of Gassaway, West Virginia

CAH-10.
Project No. EL90-1-000, Adirondack Hydro Development Corporation
Project No. 7481-009, Energo Corporation

Consent Agenda—Electric

CAE-1.
Docket Nos. ER84-604-013 and ER85-156-003, Southern Public Service Company

CAE-2.
Docket No. EL89-17-001, San Diego Gas & Electric Company v. Century Power Corporation
Docket No. EL89-18-001, Arizona Corporation Commission v. Century Power Corporation

CAE-3.
Docket No. EL89-23-001, Villages of Edgerton and Montpelier, Ohio v. Ohio Power Company

CAE-4.
Docket No. ER85-596-005, New England Power Company

CAE-5.
Omitted

CAE-6.
Docket Nos. ER80-573-006, ER84-604-012 and ER85-477-005, Southwestern Public Service Company

CAE-7.
Docket No. ER89-207-002, Public Service Company of New Hampshire.

CAE-8.
Docket No. EL89-26-001, Southern California Edison Company v. Arizona Public Service Company

CAE-9.
Docket No. EL89-43-001, Boston Edison Company v. Town of Concord, Massachusetts

CAE-10.
Docket No. QF88-72-003, Gulf Coast Engineering Management, Inc. and Boyce Machinery Corporation

CAE-11.
Docket Nos. ER86-316-001, EL86-21-001, ER86-332-002, ER86-334-002, ER87-69-001 and ER87-70-001, Southern California Edison Company

CAE-12.
Docket No. ER86-694-001, New England Power Pool

Consent Agenda—Gas and Oil

CAG-1.
Docket Nos. TA90-1-18-000 and 001, Texas Gas Transmission Corporation

CAG-2.
Docket No. TA90-1-17-000, Texas Eastern Transmission Corporation

CAG-3.
Docket Nos. TM90-3-48-000, ANR Pipeline Company

CAG-4.
Docket No. TQ90-2-22-000, CNG Transmission Corporation

CAG-5.
Docket No. TA90-1-35-001, West Texas Gas, Inc.

CAG-6.
Docket No. RP90-69-000, Colorado Interstate Gas Company

CAG-7.
Docket No. RP90-70-000, Equitrans, Inc.

CAG-8.
Omitted

CAG-9.

Docket Nos. RP86–168–017, *et al.*, RP86–168–018, *et al.*, and RP86–168–019, *et al.*, Columbia Gas Transmission Corporation

CAG–10.
Omitted

CAG–11.
Docket No. RP89–238–001, Washington Water Power Company

CAG–12.
Omitted

CAG–13.
Docket No. RP90–5–001, Transcontinental Gas Pipe Line Corporation

CAG–14.
Docket Nos. RP90–24–001 and TM90–2–26–001, Natural Gas Pipeline Company of America

CAG–15.
Docket Nos. CP83–254–370 and CP83–335–296, Williston Basin Interstate Pipeline Company

CAG–16.
Docket No. RP90–22–001, Algonquin Gas Transmission Company

CAG–17.
Docket No. RP89–242–002, Tennessee Gas Pipeline Company

CAG–18.
Docket No. RP89–251–002, Alabama-Tennessee Natural Gas Company

CAG–19.
Docket No. RP89–255–001, Texas Eastern Transmission Corporation

CAG–20.
Docket Nos. RP89–191–001 and 010, Northwest Pipeline Corporation

CAG–21.
Docket No. RP89–196–002, Northwest Pipeline Corporation

CAG–22.
Docket No. RP89–183–001, Williams Natural Gas Company

CAG–23.
Docket No. CP82–487–024, Williston Basin Interstate Pipeline Company

CAG–24.
Docket No. FA85–34–002, Stingray Pipeline Company

CAG–25.
Docket Nos. RP89–134–000, RP89–9–000 and RP88–241–000, Panhandle Eastern Pipe Line Company

CAG–26.
Docket No. RP88–120–000, Chandeleur Pipeline Company

CAG–27.
Docket No. ST89–4745–000, Delhi Gas Pipeline Corporation

CAG–28.
Docket No. ST89–4663–000, Dow Pipeline Company

CAG–29.
Docket No. RM89–14–000, Natural Gas Policy Act of 1978; Application for Approval of Alternative Filing Requirements By the State of Michigan Department of Natural Resources

CAG–30.
Docket No. GP89–53–000, West Virginia Department of Commerce, Labor and Environmental Resources

CAG–31.
Docket No. GP89–38–001, Corinne B. Grace, Complainant v. El Paso Natural Gas Company, Respondent

CAG–32.
Docket No. GP88–28–001, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73

CAG–33.
Docket No. G–16679–002, Jupiter Corporation and Tennessee Gas Pipeline Company

CAG–34.
Docket No. CP89–267–001, Atlantic Richfield Company and Intalco Aluminum Corporation

CAG–35.
Docket No. CP87–474–005, Great Lakes Gas Transmission Company

CAG–36.
Docket No. CP85–538–004, ANR Pipeline Company
Docket No. CP85–439–003, Northwest Pipeline Corporation

CAG–37.
Docket Nos. CP88–171–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. CP88–94–000, 001, CP88–194–000 and 001, National Fuel Gas Supply Corporation
Docket Nos. CP88–92–000, 001, CP89–7–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88–195–000, 001, 002 and 005, PennEast Gas Services Corporation, CNG Transmission Corporation

CAG–38.
Docket No. CP89–2201–000, Alabama-Tennessee Natural Gas Company

CAG–39.
Docket No. CP88–651–000, Northwest Pipeline Corporation

CAG–40.
Docket Nos. CP89–2093–000, Inter-City Minnesota Pipelines Ltd., Inc.

CAG–41.
Docket No. CP89–2087–000, Colorado Interstate Gas Company

CAG–42.
Docket No. CP89–1782–000, Tennessee Gas Pipeline Company

CAG–43.
Docket No. CP88–656–000, MexUs Interstate Pipeline, Inc.

CAG–44.
Docket No. CP90–12–001, National Fuel Gas Supply Corporation

Hydro Agenda

H–1.
Project Nos. 1417–012 and 1835–025, Central Nebraska Public Power and Irrigation District, *et al.* Order on petitions for interim license conditions.

H–2.
Project No. 5074–017, Baker Power Company. Order in response to a request to stay the commencement of construction deadline for Project No. 5074.

H–3.
Project No. 6432–001, Liberty County, Montana, *et al.*
Project No. 7022–000, Malta Irrigation District, *et al.*
Project No. 7099–000, City of Gillette, Wyoming
Project No. 3574–000, Continental Hydro Corporation. Order on abuse of municipal preference.

Electric Agenda

E–1.
Docket No. QF87–237–001, Midland Cogeneration Venture Limited Partnership. Order on application for recertification of qualifying facility status and request for waiver.

E–2.
Docket No. FA86–23–002, Montaup Electric Company
Docket No. FA85–8–001, Public Service Company of New Hampshire. Order on initial decision.

Gas and Oil Agenda

I.
Pipeline Rate Matters

PR–1.
Reserved

II.
Producer Matters

PF–1.
Docket No. RM82–32–002, Limitation on Incentive Prices for High-Cost Gas to Commodity Values. Final Rule.

III.
Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,
Secretary.
[FR Doc. 90–2137 Filed 1–25–90; 4:44 pm]
BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register January 24, 1990.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday January 31, 1990.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

1. Proposals regarding the budget of the Office of the Inspector General.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 26, 1990.
William W. Wiles,
Secretary of the Board.
[FR Doc. 90–2204 Filed 1–26–90; 12:57 pm]
BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12:00 noon, Monday, February 5, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–2232 Filed 1–26–90; 3:56 pm]

BILLING CODE 6210–01–M

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Thursday, March 8, 1990, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission and the Committee meeting will be held on Thursday, March 8, from 10:00 a.m. to 5:30 p.m., on Friday, March 9, from 9:00 a.m. to 5:30 p.m., and on Saturday, March 10, from 9:00 a.m. to 1:00 p.m.

PLACE: The New Otani Kaimana Beach Hotel, 2863 Kalakaua Avenue, Honolulu, Hawaii 96815.

STATUS: The executive session will be closed to the public. At it, matters relating to personnel, the internal practices of the Commission, and international negotiations in process will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. Major issues that the Commission plans to consider at the meeting include high seas driftnet fisheries, domestic and international aspects of the tuna-porpoise problem, the Hawaiian monk seal program, the humpback whale recovery program, the West Indian manatee, and implementation of the 1988 amendments to the Marine Mammal Protection Act.

SUPPLEMENTARY INFORMATION: This is a second notice of the Commission's March 1990 meeting and does not constitute any change in the scheduling, location, or agenda. The matters to be considered are those which were originally published in the October 12, 1989 (54 FR 41900) notice.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653–6237.

Dated: January 26, 1990.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 90–2235 Filed 1–26–90; 3:56 pm]

BILLING CODE 6820–31–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Wednesday, January 24, 1990, 55 FR 2480.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, January 30, 1990.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required changing the date of this meeting to February 5, 1990, at 9:30 a.m. at this time and that no earlier announcement was possible.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Dated: January 26, 1990.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 90–2215 Filed 1–26–90; 1:29 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 29, February 5, 12, and 19, 1990.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTER TO BE CONSIDERED:

Week of January 29

Tuesday, January 30

2:00 p.m.
Briefing on Status of Proposed Rule on License Renewal (Public Meeting)

Thursday, February 1

2:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (If needed)

Week of February 5—Tentative

Thursday, February 8

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, February 9

2:00 p.m.
Briefing by Executive Branch (CLOSED—Ex. 1)

Week of February 12—Tentative

Wednesday, February 14

2:00 p.m.
Briefing on Status of Industry's Implementation of Unresolved Safety Issues (Public Meeting)

Thursday, February 15

9:00 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 19—Tentative

Tuesday, February 20

2:00 p.m.
Annual Briefing on Medical Use of Byproduct Material (Public Meeting)

Wednesday, February 21

2:00 p.m.
Briefing by Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 492–1661.

Dated: January 25, 1990.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–2227 Filed 1–26–90; 3:56 pm]

BILLING CODE 7590–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–90–02A

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT" 55 FR79 6—dated Jan. 9, 1990.

ADDITIONAL MEETING SCHEDULED FOR: 4:30 p.m., Monday, January 22, 1990.

Notice is given that an emergency Commission meeting was scheduled at 4:30 p.m. on January 22, 1990 in conformity with 19 CFR 201.35(c)(1). Commissioners Brunsdale, Cass, Eckes, Lodwick, and Rohr determined by recorded vote to convene the meeting. It was affirmed that no earlier announcement of the additional meeting was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: January 23, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–2205 Filed 1–26–90; 12:57 pm]

BILLING CODE 7020–02–M

federal register

Tuesday
January 30, 1990

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

Occupational Exposure to Lead; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket Nos. H-004E, F, G, H, I, and J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; statement of reasons.

SUMMARY: This statement of reasons sets forth OSHA's determinations with regard to the economic feasibility of meeting a permissible exposure limit (PEL) between 50 and 200 micrograms of lead per cubic meter ($\mu g/m^3$) of air through engineering and work practice controls in nonferrous foundries. This determination is made in response to an order of the U.S. Court of Appeals for the District of Columbia Circuit, which remanded the record to OSHA for reconsideration of the question of economic feasibility for this industry sector.

Based upon the record, OSHA determined on July 11, 1989 (54 FR 29142 *et seq.*) that an engineering control level of 50 $\mu g/m^3$ was technologically feasible for facilities in nine industry sectors, but that this engineering control level was not economically feasible for the norferrous foundry sector. The basis for OSHA's determination of economic infeasibility for nonferrous foundries was that the costs of achieving compliance with an engineering control level of 50 $\mu g/m^3$ would contribute to the closing of more than one-half of the small nonferrous foundries in this country. The departure of these small foundries would have a particularly severe impact on this sector because small foundries constitute 60 percent of all nonferrous foundries. In the Federal Register notice of July 11, OSHA also found that an engineering control level of 50 $\mu g/m^3$ was not overly burdensome for large foundries. Recent reanalysis of the data confirms that conclusion, which OSHA hereby reaffirms. Further, OSHA noted that, although achieving the PEL of 50 $\mu g/m^3$ through engineering and work practice controls alone was overly burdensome for small nonferrous foundries, the Agency had not determined whether an engineering control level above 50 $\mu g/m^3$ but below 200 $\mu g/m^3$ (the prevailing engineering control level for this sector) for small foundries would be economically achievable (54 FR 29142).

The notice published today sets forth OSHA's determination that, at an engineering control level of 50 $\mu g/m^3$ for large foundries (20 or more employees) and 75 $\mu g/m^3$ for small foundries (fewer than 20 employees), OSHA's standard for occupational exposure to airborne lead is economically feasible for nonferrous foundries.

Although the Agency believes, based on the currently available information, that an engineering control level of 75 $\mu g/m^3$ is economically feasible, the Agency will proceed with a survey to further assess the impact of the 75 $\mu g/m^3$ engineering control level on the economic viability of the small nonferrous foundries. As a part of this continuing investigation OSHA will accept information from the public regarding the economic feasibility of 75 $\mu g/m^3$ or alternative levels for this industry. Within three years from the date of this decision, OSHA will either reaffirm this decision on the basis of the information received or will set another level.

DATE: Effective date is March 1, 1990. The compliance and start-up dates for nonferrous foundries are set out in paragraphs (e) and (r) of 29 CFR 1910.1025, as hereby amended.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202/523-8148.

SUPPLEMENTARY INFORMATION:

I. Background and Judicial History of the Lead Standard

Paragraph (c) of the lead standard requires the employer to assure that no employee is exposed to lead at concentrations greater than the PEL of 50 $\mu g/m^3$, measured as an 8-hour TWA. Paragraph (e) requires that, to the extent feasible, the employer shall control employee exposures to or below that PEL solely by means of engineering and work practice control. Paragraph (e) further requires that, where engineering and work practice controls are insufficient to reduce employee exposures to or below the PEL, the employer shall nonetheless implement these controls to reduce employee exposures to the lowest feasible level and shall supplement engineering and work practice controls by the use of respirators, in accordance with paragraph (f), to achieve the PEL.

Although, for convenience, the discussion in this preamble at times may refer to the feasibility of achieving the PEL or alternative engineering control levels, neither the PEL of 50 $\mu g/m^3$ nor the feasibility of achieving that PEL is at issue here. There is no question that 50 $\mu g/m^3$ can be achieved by some combination of engineering and work practice controls and respirators. The issue in the lead remand is whether it is economically and technologically feasible to control employee exposures to or below the PEL of 50 $\mu g/m^3$ solely by means of engineering and work practice controls, as required by paragraph (e)(1).

More specifically, in this remand on nonferrous foundries, where OSHA has already found that achieving 50 $\mu g/m^3$ by means of engineering and work practice controls is not economically feasible for this industry sector (54 FR 29142), the issue is what, if any, level between 50 $\mu g/m^3$ and 200 $\mu g/m^3$ (the prevailing engineering control number for this sector) can be achieved solely by means of engineering and work practice controls. Still more narrowly, since OSHA also has effectively found that achieving a PEL of 50 $\mu g/m^3$ by means of engineering and work practice controls is technologically feasible for large and small nonferrous foundries and is economically achievable for large foundries (54 FR 29142), the focus of this remand proceeding is what level above 50 $\mu g/m^3$ and below 200 $\mu g/m^3$, if any, is economically achievable by means of engineering and work practice controls in small nonferrous foundries.

A detailed description of the legal history of OSHA's lead standard, initially promulgated on November 14, 1978, appears at 54 FR 29142–29144 and is only briefly summarized here. Both industry and labor challenged the standard in various suits, which were consolidated and transferred to the U.S. Court of Appeals for the District of Columbia. On August 15, 1980, the Court upheld the validity of OSHA's lead standard in most respects. Specifically, the Court found OSHA's analysis of the feasibility of the standard adequate for 10 industry sectors. However, the Court stayed the enforcement of paragraph (e)(1) of the standard for 38 industry sectors on the grounds that OSHA had failed to present substantial evidence or adequate reasons to support the feasibility of paragraph (e)(1) for facilities in these sectors. *United Steelworkers of America* v. *Marshall*, 647 F.2d 1139 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).

Although the Court stayed paragraph (e)(1) for facilities in these 38 sectors, it required employers in these sectors to immediately achieve the PEL of 50 $\mu g/m^3$ by using some combination of engineering controls, work practices, and respiratory protection. In addition,

the Court remanded the rulemaking record to OSHA for reconsideration of the issues of the technological and economic feasibility of achieving the PEL by means of engineering and work practice controls for these sectors. OSHA responded to this court order on January 19, 1981 by making a determination that the 50 $\mu g/m^3$ PEL for lead was feasible in an expanded list of industry sectors. The Agency published this determination in a Supplemental Statement of Reasons and Amendment of the Standard on January 21, 1981 (46 FR 6134). Subsequently, OSHA requested the Court to permit the Agency to reconsider these feasibility findings in the light of industry petitions for reconsideration, and the Court granted OSHA's request. A December 11, 1981 **Federal Register** notice (46 FR 60758) reaffirmed OSHA's earlier findings of feasibility for most of the remand industry sectors but stated that the Agency could not reach a conclusion regarding the feasibility of the standard for facilities in eight sectors and additionally wished to reconsider the applicability of the standard to the stevedoring sector. Accordingly, the Agency asked the Court to remand the rulemaking record to OSHA for these nine industry sectors, and the Court on March 31, 1987 granted that request. The Court gave OSHA until October 1, 1987, to return the record to the Court. (This deadline was later extended several times.)

OSHA then contracted with Meridian Research, Inc., a private consulting firm, to collect, develop, and update data pertinent to an evaluation of the feasibility of the standard in the nine remand sectors. Meridian's first report was placed into the docket on August 3, 1987, and an informal public hearing was held in November 3–6, 1987. After the hearing, several participating parties identified a need for OSHA and its contractor to conduct additional information-gathering site visits in several of the lead industries. Meridian conducted a total of eight site visits to facilities in the secondary copper, lead pigments, lead chemicals, and nonferrous foundry sectors, and detailed reports of these site visits were placed into the rulemaking record on April 4, 1988 [Exs. 684a through 684g]. Specifically, Meridian conducted site visits to three nonferrous foundries, Foundries E, F, and G [Exs. 684e, f, and g].

Based on these site visit reports and an analysis of additional information and data in the record, Meridian developed an Addendum to its August 1987 Report on the Nonferrous Foundry Industry. Meridian's Addendum Report was submitted to the record, which was reopened on April 7, 1988 to receive comments. Thereafter, rulemaking participants were given the opportunity to comment on the Addendum Report, and a total of 45 submissions were received.

OSHA then requested that the court extend the deadline for returning the remand record until November 30, 1988 because of the large number of submissions received and the complexity of some of the data submitted during the limited reopening of the record. On September 7, 1988, the court granted OSHA's request. Additional extensions of the deadline were necessary for the Agency to complete its extensive analysis of the record and to draft its feasibility findings for the remand sectors. On June 28, 1989, OSHA returned the record and requested that the court approve the Agency's findings. At the same time, OSHA asked the court to remand the record for the nonferrous foundry industry to the Agency to determine whether an engineering control level above 50 $\mu g/m^3$ but below 200 $\mu g/m^3$ was feasible for the small-business segment of this sector. On August 15, 1989, the court agreed to remand the record for this industry to OSHA for further analysis.

II. Feasibility Analysis for Small Nonferrous Foundries

OSHA examined the economic feasibility of the lead standard in the nonferrous foundry industry in two phases. The focus of the Agency's initial analysis was on the large firms in this sector, which account for 80 percent of this sector's shipments and 77 percent of its exposed workforce (54 *FR* 29244). This initial analysis determined that, at an engineering control level of 50 $\mu g/m^3$, "* * *large foundries pouring primarily non-leaded castings should be able to absorb the costs of the rulemaking without undue burden" (54 FR 29245). Additionally, with regard to large foundries primarily pouring leaded alloys, the Agency found that "[g]iven the profitability of these foundries they should be able to finance the costs of the rulemaking without undue burden" (54 FR 29245). Consequently, OSHA in this phase found paragraph (e)(1) of the lead standard economically achievable for large foundries.

The Agency also clearly identified an economic problem for small foundries. The identification of this problem initiated the second phase of OSHA's analysis, which focused exclusively on the small-business segment identified in the initial analysis as requiring further study. The results of this later analysis are described in this notice.

OSHA has further considered how best to define the small business segment of the nonferrous foundry industry. Throughout the lengthy course of this rulemaking, industry itself and industry census reports have continuously classified the small foundry segment by employment size (Ex. 553–3, p. 1–11; 571–1, pp.10, 13; 581–2, p. 7; 582–84, p.1; 658, 686A). In part because industry and public comment indicate that the widely-accepted measure within industry is to designate small foundries as those with fewer than 20 employees (Exs. 553–3, p. 1–11; 571–1, p. 10; 581–2, p. F; 582–84, p.1), OSHA accepts this classification and relies upon this parameter to differentiate foundries for these regulatory purposes.

In addition, total employment has several advantages as a defining parameter. For example, total employment can be determined easily on the basis of available records (e.g., payroll records, workers' compensation premium reports, etc.) and thus use of this cutoff does not impose an additional recordkeeping burden. Second, use of this parameter is consistent with the methodology OSHA used in its initial feasibility analysis for this sector and is also a widely used measure of establishment size in the economic literature. Finally, in the record there are financial data that permit foundries to be differentiated with respect to economic characteristics and number of employees (see the discussion of the costs of compliance and economic feasibility for the nonferrous foundry industry at 54 FR 29240 et. seq.). Thus, although use of a total employment criterion has some disadvantages, e.g., it may change with seasonal work or with business swings, it has several advantages that outweigh these disadvantages. Accordingly, OSHA's analysis of the economic achievability of alternative engineering control levels for the small-business segment of this industry focuses on nonferrous foundries employing fewer than 20 employees. There are, of course, other parameters for identifying small foundries: Volume of sales, assets, volume of leaded alloy poured, percentage of lead in the alloys poured, or use of a particular technology. For the following reasons OSHA did not rely on those parameters.

The total volume of leaded alloy poured and the percent of lead in the alloys poured by a foundry are characteristics that cannot be reliably linked to a foundry's ability to finance the costs of engineering controls; thus,

the use of one or both of these parameters to differentiate among foundries would not be appropriate. Further, data on these operating characteristics by size-class of firm were generally unavailable for this industry, either in the record or in the literature.

Financial parameters, such as annual sales or company assets, have obvious advantages as cutoff indicators. One of their principal advantages is that owners already keep financial data for many purposes, e.g., taxes, business planning, recordkeeping, etc., and thus would not be required to maintain specific records solely for the purpose of demonstrating that they meet the Agency's cutoff and thus qualified for a less stringent engineering control level. However, the use of financial parameters can have undesirable consequences. If a sales-based cutoff were used, for example, an employer would have an incentive to hold sales down in the last quarter of the year to ensure that his/her company remained below the dollar cutoff chosen. Use of an asset-based definition might similarly encourage employers to rent a larger portion of their assets (e.g., to create a "paper" corporation to rent the foundry's buildings back to the operators of the foundry) or to keep less working capital in the company. Another disadvantage of the use of revenue as a cutoff parameter is that revenues are directly affected by the price of raw materials; variations in the price of raw materials have traditionally contributed to large price swings in the nonferrous and other hot metal industries. Such swings could cause a firm to qualify for a less stringent engineering control level in one year and not to qualify in the following year. In addition, a firm that poured alloys requiring more expensive grades of brass or bronze would achieve a higher level of revenues than another foundry simply because its sales price was elevated as a result of the cost of its raw materials.

The use of a technology-based cutoff is generally appropriate when there is clear evidence that particular technologies are related to the relative financial health of facilities employing different technologies. However, there are no data in the record to demonstrate that, for example, crucible-using foundries as a group fall consistently into the smaller size categories of foundries. Another disadvantage of using the technology-based cutoff is that an incentive is provided for foundry owners to forgo investment in more productive technology.

OSHA's reanalysis of the record evidence for small foundries was based on the following data sources: OSHA's Integrated Management Information System [IMIS, Exs. 583–1, 650]; OSHA case files [Ex. 585]; the American Foundrymen's Society [AFS, Ex. 694–26]; and submissions from Foundry G [Ex. 684G], Foundry 1 [Ex. 613b–5], Foundry 2 [Ex. 613b–4], Prattville [Ex. 583–14], Hill Air Force Base Non-Ferrous Foundry [Exs. 582–94 and 649], Aacco Foundry, Inc. [Ex. 582–7], and Federal-Mogul Corporation [Ex. 582–7]. Unfortunately, the submissions from Foundry 1, Foundry 2, Aacco, and Prattville contained little quantitative exposure data and complementary information to use for the purpose of characterizing employee exposures, technologies in place, or the engineering controls needed to achieve compliance with an alternative engineering control level. The Aacco submission provided eight exposure measurements taken at the company's foundry, but the job categories or activities of the employees monitored were not described. Hill Air Force Base and Foundry G were atypical of brass and bronze foundries either because of the types of alloys or foundry processes used (54 FR 29224–29225). Processes at Federal-Mogul were subsequently also identified as being atypical.

The American Foundrymen's society (AFS) submitted two sets of small-foundry data [Exs. 667 and 694–26]. AFS' initial submission [Ex. 667] reported only a single summary data point for each major operation in small foundries, and this information was therefore not useful to OSHA either for the Agency's technological or economic feasibility analysis. The second AFS submission [Ex. 694–26] contained some information on the distribution of employee lead exposures in small foundries. However, OSHA was not able to use the data from the AFS' second submission to determine the technological feasibility of the 50 $\mu g/m^3$ PEL (see the discussion at 54 FR 29224) because these data were not accompanied by explanations of the conditions, processes, and controls in place when these monitoring results were obtained. OSHA also found these data to be of limited usefulness in the present analysis, since neither the total number of foundries represented nor a plant-specific breakout of the data were provided. OSHA therefore used the AFS data only for illustrative purposes (see the section below on Existing Exposure Levels).

Consequently,in this second-phase analysis OSHA has relied on the Integrated Management Information System (IMIS) data [Exs. 583–1, 650] and information contained in OSHA inspection case files [Ex. 585].

The IMIS data base is useful because it contains an extensive amount of employee exposure data gathered during compliance inspections by well-trained industrial hygienists (OSHA's CSHOs) who are familiar with a broad cross-section of industrial workplaces. The IMIS contributed a total of 88 employee sampling results (exclusive of the compliance case files discussed below) to the Agency's profile of lead exposures with 45 representing exposure levels in very small (9 or fewer employees) and small (between 10 and 19 employees) nonferrous foundries. OSHA notes that it has proceeded conservatively in its reliance on these data. IMIS data, in general, are upwardly biased as a result of workplace selection criteria (e.g., worker complaints, programmed inspections).

The compliance case files provide the most comprehensive information in the record on employee exposures, processes and technologies in use, controls in place, and other relevant characteristics of small nonferrous foundries. There are a total of 14 relevant case files in the record; these files represent 13 brass and bronze foundries that pour alloys containing a substantial percentage of lead. Of the 14 case files, six files described foundries with fewer than twenty employees; eight files described foundries with 20–30 employees.

Thus, for its in-depth analysis of the feasibility of an engineering control level between 50 $\mu g/m^3$ and 200 $\mu g/m^3$ for small nonferrous foundries, OSHA relied on the best available evidence in the record. This evidence consists of the IMIS data [Exs. 583–1, 650] and the small foundry compliance case files [Ex. 585]. The use of data from these data sets has enabled OSHA to construct a detailed exposure-control baseline for these foundries, to determine what percentage of these facilities would be likely to incur costs, and to estimate the engineering controls required, along with their associated costs.The following sections describe the detailed evidence in the record for small nonferrous foundries.

Process Description

The OSHA compliance case files [Ex. 585] represent the only source of detailed information in the record on equipment and processes that are typically used in small non-ferrous foundries. These case files describe the observations made by OSHA compliance officers while making health

inspections at foundry facilities. From this collection of case files, OSHA identified six files describing foundries employing fewer than 20 employees. An additional eight case files from foundries employing from 20 to 30 workers were also included in this data set because the technology and processes used to melt, pour, and finish products are the same as those typically used in foundries employing fewer than 20 employees.

Table 1 summarizes the major equipment and operating characteristics of the 13 brass and bronze foundries represented by 14 case files contained in the record (two case files designated as Company Q and Company R represent two different inspections of the same foundry). Brass and bronze castings represent products produced by all of the case-file foundries. For 11 of these foundries, the case file clearly indicates that brass or bronze containing at least 5-percent lead was used on the day of inspection; in four of these cases, the quantity of high-lead-containing brass or bronze poured on the day of the inspection represented from 38 to 65 percent of total production. Thus, OSHA is confident that the information contained in these foundry case files is relevant for examining the economic feasibility of the engineering control requirements of the lead standard for small brass and bronze foundries.

TABLE 1.—EQUIPMENT AND OPERATING CHARACTERISTICS OF THE NONFERROUS FOUNDRIES REPRESENTED BY THE CASE FILE

Foundry/case file (number of employees)	Number and type of furnace(s)	Alloy	Molding	Shakeout	Cleaning
C (28)	4 gas crucibles 1 Electric crucible	6 to 10% Pb poured 1985 0.02 to 2% Pb poured 1987.			Sanding done in nonventilated isolation booths.
D (30)	5 or 6 melt pots in operation	Bronze (1.28% lead poured in 1 pot).	Muller		6 pedestal grinders (5 in operation).
K (20)	1 furnace (200–300 lbs.)	4 to 6% lead comprised 41% of metal poured that day.			Cutoff saw.
N (9)	Probably crucible furnace	Limited use of 5%-leaded brass.		Manual shakeout	Cutoff saw and grinding stations.
O (5)	1 gas-fired crucible furnace; crucible has 30-lb. capacity.	5 to 10% 5% lead poured 60 to 65% of the time; 10% lead alloy also poured.			Pedestal grinder.
Q & R (24)	2 induction furnaces (2 pots/furnace), 350 lbs. metal/pot, average 35 to 40 pots/day.	5%	Muller		Cutoff saw.
S (20)	Induction	7%	Squeeze jolt	Shakeout conveyor	Shakeout conveyor, pedestal grinders, hand grinders, Wheelabrator, abrasive cutoff saws, pneumatic hand tools.
T (5)	1 Gas crucible	@ 10% brass (40% of products contain lead).			Double stand grinder, Wheelabrator.
V (7) [1]	1 Furnace used for lead	Approx. 700 lbs. bronze (7% lead).			
W (9)	1 Crucible induction furnace	7%			Grinder (probably more than one).
X (27)	Electric induction crucible furnace.	Various copper alloys (lead content not specified).			Grinding stations.
DD (9)	4 crucible furnaces	Brass (5% Pb) poured several times per month.	Jolt squeezer	Vibrator	Taber cutoff saw, 3 grinders, sprue and gate cutter, Wheelabrator, polishing machine.
FF (22)	1 High-lead (7%) dedicated 1 Low-lead (1.25%) dedicated furnace.	7% brass comprised 38% of metal poured that day. 1.25% brass comprised of 3% of metal poured that day.			2 hand grinders, 1 cutoff saw, 1 sand blaster.

[1] Has both foundry and machine shop.
Source: Exhibit 585.

The opportunity to more closely examine the inspection files has enabled OSHA to refine previous estimates, as applicable, by enabling the Agency to more accurately characterize the technologies associated with very small and small foundries. For example, in estimating compliance costs for very small foundries in its previous analysis, OSHA included costs for ventilation equipment to control three furnaces in plants which primarily produce leaded alloys. However, after studying case files N, O, T, W, and DD [Ex. 585], all foundries with fewer than 10 employees, it was found that only one furnace is typically required for melting leaded alloys in this size class of foundry.

Additionally, in its previous analysis, OSHA performed its feasibility determination based on the assumption that foundries employing over 10 workers would require the controls associated with the higher capacity melting equipment, similar to that used at Foundry E. However, in no case were charging operations as described in the case files of inspected foundries similar to the charging operation of Foundry E, a large foundry (110 employees), which was the subject of an OSHA site visit. OSHA now estimates that "small" operations (10–19 employees), as well as "very small" plants (1–9 employees), typically use crucible-type melting equipment. Even foundries employing from 20 to 30 employees in the inspection reports use this type of melting equipment. The crucible-type furnaces (both gas fired and electric induction) described in the case files are not associated with the serious plant wide exposure control problems that are associated with large, top-charge electric induction furnaces. The type of

engineering control required to control exposure at this type of melting process are different from and less expensive than the engineering controls needed for larger process equipment. Operations typical of very small and small foundries are discussed in more detail below.

In small non-ferrous foundries, metal ingots are melted in gas-fired or electric induction crucible furnaces. The ingots are loaded in the crucible (or melt pot) and the crucible is placed directly in the furnace to melt the metal. By contrast, the larger a foundry (such as Foundries E and F, Exs. 684e and 684f) the more likely it is that it will use furnaces with larger capacity. In such furnaces, metal ingots or scrap are charged from the top or side and molten metal is tapped from the bottom. It is evident from the case files that small nonferrous foundries do not generally require the melting capacity provided by large, continuously operating furnaces. Instead, small foundries meet their production needs by employing one or more smaller crucible furnaces in a batch operation. When demand is strong some foundries (e.g., see case files for Company V and Company FF), will dedicate one crucible furnace to the production of high-lead-containing castings, thus limiting the cost of installing, operating, and maintaining ventilation equipment to one furnace only.

Once the metal has melted, the crucible is removed (usually manually, but sometimes by hoist) and taken to the pouring line to pour the molds. Based on information contained in the case files, the melting and pouring operations are conducted by the same employees. In small foundries the melting operation is relatively simple and does not require continuous tending, as is the case for larger charging and tapping furnaces in large foundries.

In moldmaking, sand is mixed with binders and shaped into molds used during the pouring operation. The case files indicate that, in small foundries, moldmaking is performed on an intermittent basis using manual process (e.g., with squeeze-jolt equipment); seven of the 14 case files mention moldmaking operations being performed on the day of OSHA's inspection (case files for companies C, N, S, T, W, X, and DD). Employees who perform moldmaking are usually involved in other foundry operations as well, such as pouring molds or finishing castings (see case files for Companies N, S, T, and X).

After the metal has been poured into the molds and allowed to solidify, the sand mold is broken off of the casting. In small foundries, this operation is performed manually (see case file for Company N) or on a vibrating table (see case file for Company DD). The sand that is broken form the casting is usually allowed to fall to the floor, where it is later transported back to the moldmaking area by hand or with a small front-end loader.

Finishing operations involve the use of cutoff saws and grinders to clean off excess sand and remove excess metal (gates, sprues, and risers). Nearly all of the OSHA case files for small foundries contain information on finishing operations. Cutoff saws are used routinely in some, but not all, of the case file foundries; in contrast, almost all of the small case file foundries use grinding equipment (see Table 1). A few small foundries also use wheelabrators, pneumatic hand tools, or sandblasting equipment for finishing operations. In small foundries, employees who are engaged in finishing operations may also perform other foundry operations (see, for example, case files for Company DD and Company T).

Existing Exposure Levels

As discussed above, OSHA relied on two data sets in the record to evaluate employee exposures to lead in small nonferrous foundries. These include:

- Sampling results form OSHA's IMIS [Ex. 650]; and
- Case files from OSHA's compliance inspections of 13 small brass and bronze foundries contained in 14 case files (one company was inspected twice) [Ex. 585].

OSHA used these data to characterize employee exposure in very small and small non-ferrous foundries in two ways:

- To determine the distribution of employee exposures across the range of possible exposures in small foundries; and
- To estimate the percentage of small foundries that are likely to incur costs at each of three alternative engineering control levels: 75 $\mu g/m^3$, 100 $\mu g/m^3$, and 150 $\mu g/m^3$.

Tables 2 through 4 present case file data for six foundries with fewer than 20 employees, while Tables 5 through 7 present case file data for foundries (seven foundries represented in eight case files) with 20–30 employees.[1] Data from the melting and pouring operations were combined to represent a single process area because the case files indicate that, in small foundries, the same employees frequently perform both operations. In some cases, employees also performed work in more than one of the three major process areas; in these cases, OSHA assigned each employee's exposure to the foundry process area in which most of the employee's work was performed. Consistent with the Agency's previous findings, exposures to airborne lead for workers in the molding area are due principally to cross-contamination from both "hot" operations (melt/pour) and finishing operations.

[1] Data originating from case files of foundries with 20–30 employees were used in conjunction with applicable control information. All other data from foundries with 20–30 employees is referred to only for illustrative purposes.

TABLE 2.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing fewer than 20 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
W	79
DD	10
DD	66
DD	7.6
DD	65
V	24
O	184
O	56.4
T	29.8
N	39
No. of samples < 50	5
No. of samples > 50 and < 75	3
No. of samples > 75 and < 100	1
No. of samples > 100 and < 150	0
No. of samples >150 and < 200	1
No. of samples > 200	0
Total no. of samples	10

Source: Ex. 585.

TABLE 3.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MOLDING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing fewer than 20 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
W	25.4
W	54
T	3.75
No. of samples < 50	2
No. of samples > 50 and < 75	1
No. of samples > 75 and < 100	0
No. of samples > 100 and < 150	0
No. of samples > 150 and < 200	0
No. of samples > 200	0
Total no. of samples	3

Source: Ex. 585.

TABLE 4.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing fewer than 20 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
W	427
DD	12
DD	41.7
V	0
V	2
T	63.3
N	56
N	3
N	9
No. of samples < 50	6
No. of samples > 50 and < 75	2
No. of samples > 75 and < 100	0
No. of samples > 100 and < 150	0
No. of samples >150 and < 200	0
No. of samples > 200	1
Total no. of samples	9

Source: Ex. 585.

TABLE 5.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing 20–30 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
S	86
S	100
K	44
K	53
Q *	21
Q	65
Q	23
R *	41
R	27
D	12.9
D	35.2
D	34
FF (1983)	63.5
FF (1983)	61.4
FF (1983)	116
FF (1983)	499
FF (1985)	27
FF (1985)	19
FF (1985)	24
FF (1985)	48
FF (1985)	22
C (1985)	226
C (1985)	496
C (1985)	299
C (1985)	223
C (1985)	202
C (1985)	263
C (1987)	36
X	74
X	58
X	62
No. of samples <50	14
No. of samples >50 and <75	7
No. of samples >75 and <100	2
No. of samples >100 and <150	1
No. of samples >150 and <200	0
No. of samples >200	7
Total no. of samples	31

* Files Q and R represent two inspections of the same foundry.

Source: Ex. 585.

TABLE 6.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MOLDING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing 20–30 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
S	67
C (1985)	92
C (1985)	43
C (1985)	70
C (1985)	200
C (1985)	86
C (1985)	60
C (1985)	70
C (1985)	176
C (1987)	10
C (1987)	11
C (1987)	13
No. of samples <50	4
No. of samples >50 and <75	4
No. of samples >75 and <100	2
No. of samples >100 and <150	0
No. of samples >150 and <200	2
No. of samples >200	0
Total no. of samples	12

Source: Ex. 585.

TABLE 7.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED IN OSHA CASE FILES

[For foundries employing 20–30 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
S	97
K	58
Q *	6.6
Q	15
Q	80
Q	60
Q	80
R *	41
R	8
R	23
FF (1983)	170
FF (1983)	157
FF (1985)	16
FF (1985)	38
FF (1985)	79
FF (1985)	9
FF (1985)	9
FF (1985)	0
FF (1985)	4.3
FF (1985)	1,000
FF (1985)	130
C (1985)	55
C (1985)	88
C (1985)	80
C (1985)	420
C (1987)	268
C (1987)	79
C (1987)	19
No. of samples <50	12
No. of samples >50 and <75	3
No. of samples >75 and <100	7
No. of samples >100 and <150	1
No. of samples >150 and <200	2

TABLE 7.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED IN OSHA CASE FILES—Continued

[For foundries employing 20–30 employees]

Foundry/case file	8-hour TWA ($\mu g/m^3$)
No. of samples >200	3
Total no. of samples	28

* Files Q and R represent two inspections of the same foundry.

Source: Ex. 585.

Tables 8 through 13 present the IMIS exposure readings, also grouped by major operation. Tables 8 through 10 present data for foundries with fewer than 20 employees, while Tables 11 through 13 present data for foundries with 20–30 employees. Forty-five employee exposure measurements from the IMIS data set were classifiable into the three foundry operations for foundries employing fewer than 20 workers. However, fifty-six exposure measurements could not be classified into the three major foundry operations. These data were excluded from the exposure analysis but are shown separately in Table 14.

TABLE 8.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries Employing Fewer Than 20 Employees]

Activity No.	Company ID	Job code	8-hour TWA ($\mu g/m^3$)
1812783	9	Melter	30
1812783	9	Pourer/ Chaser.	28
1812783	9	Pourer/ Chaser.	280
100459718	16	Melter	7
100459718	16	Melter's Helper.	8.9
100459718	16	Melter	12
100459718	16	Melter	1
773192	24	Melter	11
3340072	30	Furnaceman	31
15226426	31	Furnaceman	18
14793624	33	Furnace Operator.	17
14793624	33	Found Fore Furnace.	8
15912264	47	Pourer	240
15912264	47	Furnace Tender.	660
101736698	49	Furnace Tender.	400
1242478	52	Caster Operator.	19
1451103	62	Pour Man	160
1451103	62	Pour Man	61
100292333	63	Pour Man	5
100292333	63	Pour Man	11
101916286	67	Melter	158

TABLE 8.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)—Continued

[For Foundries Employing Fewer Than 20 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
3151842	69	Pourer/ Tender.	3
No. of Samples <50			15
No. of Samples >50 and <75			1
No. of Samples >75 and <100			0
No. of Samples >100 and <150			0
No. of Samples >150 and <200			2
No. of Samples >200			4
Total No. of Samples			22

Source: Ex. 650.

TABLE 9.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MOLDING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries Employing Fewer Than 20 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
3340072	30	Molder	48
15226426	31	Molder	9
101738698	49	Molder	32
101738698	49	Molder	36
101738698	49	Molder	25
101738698	49	Molder	67
1242478	52	Molder	48
No. of Samples <50			6
No. of Samples >50 and <75			1
No. of Samples >75 and <100			0
No. of Samples >100 and <150			0
No. of Samples >150 and <200			0
No. of Samples >200			0
Total No. of Samples			7

Source: Ex. 650.

TABLE 10.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries employing Fewer than 20 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
100459718	16	Cutoff	1,360
100459718	16	Grinder	105
100459718	16	Wheelabrator	29
100459718	16	Grinder	84
100459718	16	Wheelabrator	9
100459718	16	Helper	93
100459718	16	Cutoff	1,330

TABLE 10.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)—Continued

[For Foundries employing Fewer than 20 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
3340072	30	Pour/Grind/ Sand.	50
3340072	30	Pour/Grind/ Sand.	34
15226426	31	Pour/Grind/ Sand.	37
15226426	31	Pour/Grind/ Sand.	20
1451103	62	Grinder	200
1451103	62	Grinder	203
100292333	63	Grinder	1
100292333	63	Grinder	1
100292333	63	Grinder	25
No. of Samples <50			9
No. of Samples >50 and <75			0
No. of Samples >75 and <100			2
No. of Samples >100 and <150			1
No. of Samples >150 and <200			1
No. of Samples >200			3
Total No. of Samples			16

Source: Ex. 650.

TABLE 11.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries Employing 20–30 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
2053049	8	Caster	13
1815901	12	Melter's Helper.	3.3
1815901	12	Melter	24
1148832	27	Furnace Operator.	47
1148832	27	Furnace Operator.	50
1148832	27	Furnace Operator.	91
1996396	29	Pourer	47
2509347	51	Pourer	28.4
2509347	51	Pourer	0
2509347	51	Furnace Tender.	59
2509347	51	Furnace Tender.	5.2
2509347	51	Pourer	0
2509347	51	Furnace Tender.	11
101655090	53	Melter	0
2681849	54	Pour off	900
2698975	59	Pourer	105
2698975	59	Furnace Operator.	56
780056	64	Mold Pour Operator.	89
780056	64	Furnace Operator.	500
780056	64	Furnace Operator.	250

TABLE 11.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MELTING/POURING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)—Continued

[For Foundries Employing 20–30 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
780056	64	Furnace Operator.	320
780056	64	Furnace Operator.	280
780056	64	Furnace Operator.	320
No. of Samples <50			12
No. of Samples >50 and <75			2
No. of Samples >75 and <100			2
No. of Samples >100 and <150			1
No. of Samples >150 and <200			0
No. of Samples <200			6
Total No. of Samples			23

Source: Ex. 650.

TABLE 12.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR MOLDING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries Employing 20–30 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
2053049	8	Molder	7.2
1148832	27	Molder	24
1148832	27	Molder	52
1148832	27	Molder	61
1996396	29	Muller	30
1996396	29	Core Operator.	7.9
1996396	29	Molder	150
101655090	53	Molding Helper.	74
780056	64	Mold Operator.	77
780056	64	Mold Operator.	65
780056	64	Core Room Operator.	46
780056	64	Mold Operator.	200
780056	64	Mold Operator.	190
780056	64	Core Operator.	110
No. of Samples <50			5
No. of Samples >50 and <75			4
No. of Samples >75 and <100			1
No. of Samples >100 and <150			2
No. of Samples >150 and <200			2
No. of Samples >200			0
Total No. of Samples			14

Source: Ex. 650.

TABLE 13.—EMPLOYEE 8-HOUR TWA EXPOSURES TO LEAD FOR FINISHING OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM (EXCLUSIVE OF CASE FILE DATA)

[For Foundries Employing 20–30 Employees]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
2053049	8	Grinder	24
1815901	12	Grinder	17
1815901	12	Grinder	4.4
1815901	12	Wheelabrator	29
1815901	12	Grinder	57
1815901	12	Cutoff	44
1148832	27	Air Grinder	69
1148832	27	Cutoff Saw Operator.	83
1148832	27	Belt Grinder	100
1148832	27	Cutoff Saw Operator.	59
1148832	27	Belt Grinder	53
1148832	27	Belt Grinder	0
1148832	27	Belt Grinder	199
1148832	27	Belt Grinder	64
1996396	29	Grinder	79
1996396	29	Grinder	56
1996396	29	Cutoff Saw Operator.	650
2681849	54	Grinder	80
2698058	57	Lathe Operator	6
2698058	57	Lathe Operator	7
2698058	57	Rough Finish	270
2698975	59	Wheelabrator	53
2698975	59	Deburrer	30
2698975	59	Deburrer	27
2698975	59	Deburrer	65
780056	64	Grinding Operator.	240
780056	64	Grinding Operator.	0
780056	64	Burr Operator	210
780056	64	Saw Operator	440

No. of samples <50	10
No. of samples >50 and <75	8
No. of samples >75 and <100	4
No. of samples >100 and <150	0
No. of samples >150 and <200	1
No. of samples >200	5
Total No. of samples	28

Source: Ex. 650.

TABLE 14.—EMPLOYEE 8-HOUR TWA EXPOSURES TO UNCLASSIFIABLE OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM

[Exclusive of Case File Data]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
2053049	[1] 8	Operator	62
2053049	8	Operator	16
2053049	8	Operator	7.2
2053049	8	Operator	7.9
2053049	8	Operator	11
2053049	8	Operator	1
2053049	8	Operator	4.5
1815869	11	Casing	9
1815901	[1] 12	Shakeout floor	30
1815901	12	Floor Skimmer	163
1815901	12	Shipper	5.1
100459718	16	Floor Worker	9
100459718	16	Core Cleaner	1
100459718	16	Varied	84
100459718	16	Floor	39
184135	23	Foundry Man	92
184135	23	Foundry Man	155
773192	24	Machine Operator	1
773192	24	Machine Operator	31
773192	24	Shankman	12
773192	24	Crane Operator	32
773192	24	Shankman	46
1148832	[1] 27	Maintenance Man	16
1148832	27	Shakeout	31
1148832	27	Shakeout	44
1148832	27	Sand Machine Op	91
1148832	27	Sand Machine Op	47
1148832	27	Maintenance Man	11
1148832	27	Casting Puller	38
1996396	29	Laborer	28
1996396	29	Laborer	29
15226426	31	Lead Man	1
14793624	33	Foundryman	35
14793624	33	Machinist	6
14793624	33	Foundryman	3
1296037	37	Mill Operator	230
1296037	37	Mill Worker	170
15912264	47	Mill Operator	190
101738698	49	Muller/ Shakeout	210
2509347	[1] 51	Laborer	9
2509347	51	Leadman	13
2509347	51	Laborer	29
1242478	52	Laborer	164

TABLE 14.—EMPLOYEE 8-HOUR TWA EXPOSURES TO UNCLASSIFIABLE OPERATIONS, AS REPORTED BY OSHA'S IMIS SYSTEM—Continued

[Exclusive of Case File Data]

Activity No.	Company ID	Job code	8-hour TWA (μg/m³)
1242478	52	Foreman	54
101655090	[1] 53	Laborer	58
2681849	[1] 54	Metal Controller	125
2698058	[1] 57	Plating Operator	4
2698058	57	Foundry Worker	77
2698058	57	Foundry Worker	6
2698975	[1] 59	(None)	
1451103	62	Maintenance Man	59
780056	[1] 64	Front End Load	110
380097	68	Foundryman	1
380097	68	Foundryman	1
380097	68	Metal Shop Foreman	1
3151842	69	Art Foundry Assembler	3.4
3151842	69	Art Foundry Assembler	1

No. of samples <50	39
No. of samples >50 and <75	4
No. of samples >75 and <100	4
No. of samples >100 and <150	2
No. of samples >150 and <200	5
No. of samples >200	2
Total No. of samples	56

[1] Denotes foundry with 20–30 employees.
Source: Ex. 650.

Tables 15 and 16 summarize the employee exposure data contained in the IMIS and case file data sets for foundries with fewer than 20 employees. Table 15 presents the employee exposure distribution that results when the IMIS and case file data sets are combined. Over three-quarters (76 percent) of all small foundry monitoring results are currently below 75 μg/m³ and 80 percent are currently below 100 μg/m³.

TABLE 15.—SUMMARY OF EMPLOYEE EXPOSURE DATA FROM OSHA'S IMIS SYSTEM AND COMPLIANCE CASE FILES FOR FOUNDRIES WITH FEWER THAN 20 EMPLOYEES

Job category/Work area	No. of samples	8-Hour TWA (μg/m³)					
		0–50	51–75	76–100	101–150	151–200	200+
Molding[2]	10	8 (80%)	2 (20%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Melting/Pouring[2]	32	20 (63%)	4 (13%)	1 (3%)	0 (0%)	3 (9%)	4 (13%)
Finishing[3]	25	15 (60%)	2 (8%)	2 (8%)	1 (4%)	1 (4%)	4 (16%)
Totals	67	43 (64%)	8 (12%)	3 (4%)	1 (1%)	4 (6%)	8 (12%)

[1] Derived from Tables 3 and 9.
[2] Derived from Tables 2 and 8.
[3] Derived from Tables 4 and 10.
Percentages may not equal 100% because of rounding.
Source: Exs. 650, 585.

OSHA developed a baseline to describe the proportion of very small and small foundries that are likely to incur costs associated with each alternative engineering control level. Table 16 shows the foundry-specific baseline obtained from the IMIS and case file data sets for foundries employing fewer than 20 workers (Tables 2 through 4 and 8 through 10). This baseline was developed by distributing foundries by their highest reported process exposure measurement (i.e., 0–50 $\mu g/m^3$, 51–100 $\mu g/m^3$, etc.) For example, for the melting/pouring operation, exposure data were available for 19 foundries; of these, 11 had melting/pouring exposure measurements no greater than 50 $\mu g/m^3$, one had measurements no greater than 75 $\mu g/m^3$, one had measurements no greater than 100 $\mu g/m^3$, three had measurements no greater than 200 $\mu g/m^3$, and the remaining three had at least one melting/pouring measurement greater than 200 $\mu g/m^3$. (OSHA notes that this approach is highly conservative, since it treats a foundry in which a single monitoring result exceeds an alternative engineering control level as requiring additional controls to achieve that engineering control level.)

TABLE 16.—NUMBER AND PERCENT OF SMALL IMIS AND CASE FILE FOUNDRIES THAT HAVE HIGHEST EXPOSURE MEASUREMENT WITHIN STATED RANGE—FOUNDRIES WITH FEWER THAN 20 EMPLOYEES

Job category	No. of facilities	8-Hour TWA ($\mu g/m^3$)					
		0–50	51–75	76–100	101–150	151–200	200+
Molding[1]	6	4 (67%)	2 (33%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Melting pour[2]	19	11 (58%)	1 (5%)	1 (5%)	0 (0%)	3 (16%)	3 (16%)
Finishing[3]	10	5 (50%)	2 (20%)	0 (0%)	0 (0%)	0 (0%)	3 (30%)

[1] Derived from Tables 3 and 9.
[2] Derived from Tables 2 and 8.
[3] Derived from Tables 4 and 10.
Percentages may not equal 100% because of rounding.
Source: Exs. 585, 650.

This distribution suggests that a substantial number of very small and small foundries are effectively limiting exposures, while some foundries have essentially uncontrolled operations.[2]

Tables 17 and 18 have been provided for illustrative purposes. Table 17 presents the exposure distribution for foundries with 20–30 workers. As shown in the Table, exposures are distributed in a pattern similar to foundries with fewer than 20 employees, with the majority of results below 100 and a cluster of results in the 200+ range.

TABLE 17.—SUMMARY OF EMPLOYEE EXPOSURE DATA FROM OSHA'S IMIS SYSTEM AND COMPLIANCE CASE FILES FOR FOUNDRIES WITH 20–30 EMPLOYEES

Job category/work area	No. of samples	8-Hour TWA ($\mu g/m^3$)					200+
		0–50	51–75	76–100	101–150	151–200	
Molding [1]	26	9 (35%)	8 (31%)	3 (12%)	2 (8%)	4 (15%)	0 (0%)
Melting/Pouring [2]	54	26 (48%)	9 (17%)	4 (7%)	2 (4%)	0 (0%)	13 (24%)
Finishing [3]	56	22 (39%)	11 (20%)	11 (20%)	1 (3%)	3 (5%)	8 (14%)
Totals	136	57 (42%)	28 (21%)	18 (13%)	5 (4%)	7 (5%)	21 (15%)

[1] Derived from Tables 6 and 12.
[2] Derived from Tables 5 and 11.
[3] Derived from Tables 7 and 13.
Percentages may not equal 100% because of rounding.
Source: Exs. 650, 585.

As noted above, the AFS submission did not contain plant-specific exposure data that would permit the development of a similar type of foundry-specific baseline. As a result, the AFS data presented in Table 18 could not be fully incorporated into this analysis. While the AFS monitoring results tend to indicate somewhat higher employee exposure levels than the IMIS and case file data, the AFS exposure frequencies also show a majority of observations below 100 with a cluster of observations in the 200+ range.

[2] In contrast to its previous analysis of nonferrous foundries, OSHA did not compute a statistic of central tendency, such as the geometric mean, to represent existing exposure levels. In its examination of alternative engineering control levels, OSHA found variability to be of critical importance, thus, a statistic of central tendency was less desirable than an exposure profile for this analysis.

TABLE 18.—SUMMARY OF SMALL-FOUNDRY EMPLOYEE EXPOSURE DATA SUBMITTED BY THE AMERICAN FOUNDRYMEN'S SOCIETY

Job category/work area	No. of samples	8-Hour time-weighted average, μg/m³							
		0–50	[1] 51–75	76–100	101–150	151–200	200+	Geometric mean (μg/m³)	Arithmetic mean (μg/m³)
Molding	63	35 (55%)	10 (16%)	10 (16%)	6 (10%)	0	2 (3%)	44.4	61
Furnace tending	70	18 (26%)	6 (9%)	6 (9%)	11 (16%)	11 (16%)	18 (26%)	109.6	231
Pouring	76	16 (21%)	6 (8%)	5 (7%)	18 (24%)	6 (8%)	25 (33%)	125.8	167
Cleaning/finishing	88	27 (31%)	14 (16%)	13 (15%)	9 (10%)	2 (2%)	23 (26%)	82.6	201
Totals[2]	297	96 (32%)	36 (12%)	34 (11%)	44 (15%)	19 (6%)	68 (23%)		

[1] AFS did not provide exposure data in the 51–75 μg/m³ category. To assess exposures for a 75-μg/m³ engineering control alternative, OSHA divided the 51–100 μg/m³ data presented by AFS equally between the 51–75 μg/m³ category and the 76–100 μg/m³ category.

[2] Columns may not total to 100 percent because of rounding.

Source: American Foundrymen's Society [Ex. 694–26, Attachment 1].

Industry Profile

Nonferrous foundries produce a wide range of castings for various uses. Castings may be quite small, such as electrical connectors, or very large, such as ships' propellors [Ex. 582–84, p. 1]. Other types of castings include bushings, bearings, valves, and fittings [Ex. 571, p. 8]. Castings are used extensively as components in equipment such as military hardware, electric power generation and distribution systems, mining machinery, and plumbing ware [Ex. 475–3A, p. 1], as well as in applications such as bathroom fixtures, furniture, and decorative items.

To produce these products, nonferrous foundries are establishments that melt and cast metal alloys. Of interest in this rulemaking are those foundries casting metal alloys which contain lead, principally copper and copper-based brass and bronze castings. (Lead is added at concentrations that range from 0.02 to 42.5 percent in 130 commercially available alloys, primarily to increase the properties of tightness, lubricity, and machinability [Ex. 475–3, p. 2; Ex. 582–84, p. 2].)

In its July 11 findings, OSHA cited evidence that established the number of foundries producing brass and bronze castings to be 1,291 (54 FR 29239; Ex. 658). Evidence in the record also allowed OSHA to estimate the number of small and very small foundries to be 736. Two hundred forty-eight of these are "very small" foundries (1–9 employees) primarily producing leaded castings, 245 are "very small" foundries primarily producing non-leaded castings, 122 are "small" foundries (10–19 employees) primarily producing leaded castings, and 121 are "small" foundries primarily producing non-leaded castings [(54 FR 29241); Ex. 658, p. 7; Ex. 571, p. 11; Ex. 581–2, p. 2]. These 736 foundries are the focus of this analysis.

Financial statistics for the small business portion of the nonferrous foundry industry were presented to OSHA's July 11 analysis. Estimates of profitability are based on Dun and Bradstreet financial information and other comments to the record [54 FR 29239–40, –43]. Specific profit profiles for lead-related and total casting production are presented below (see Economic Feasibility). Information in the record also allowed OSHA to calculate the average ratio of net income to net worth for "small" (10–19) primary brass and bronze foundries. Based on 1985 Census data and 1986 Dun and Bradstreet Industry Norms, the average net income to net worth ratio was estimated to be about 16 percent [Ex. 571, p. 38]. This ratio measures the ability of a company's management to realize an adequate return on the capital invested by the owners in the company.

Costs of Compliance

In formulating its cost estimates for very small and small foundries at the engineering control alternatives, OSHA relied upon the inspection case files, the best source of information in the record on the relationship between engineering controls and exposure levels. The foundry compliance case files contain information on the engineering controls in use at particular foundries and the employee exposure levels that have been achieved as a result of the use of these controls. The exposure and control information from each of the case files is discussed below for each operations.

Mold Making

The exposure data contained in the IMIS, case file, and AFS data sets presented above indicate that, for very small and small foundries, the lead exposures of employees engaged in mold making exceed any of the alternative engineering control levels only infrequently. The source of employee lead exposure attributable exclusively to mold making is the handling of lead-contaminated sand. Although mold making generates some dust, employee exposures are typically low because binders are added to the sand and because the sand is not at high temperature and therefore does not actively generate lead fume.

Five foundry case files [Ex. 585] contained information on the presence or absence of controls in the mold-making area, (Case Files O, S, T, W, and C). No controls were reported in place in the mold-making areas of these foundries. In four of the five cases, mold makers were not exposed above 75 μg/m³. One foundry (Company C) had mold-maker exposures above 75 μg/m³. Significantly, employees in Foundry C generally experienced high 8-hour TWA exposures to lead (frequently above 200 μg/m³) during melting, pouring, and finishing operations because of the absence of engineering controls in this foundry. Thus, it is likely that the mold makers in this foundry received lead exposure via cross contamination from emissions generated by sources other than the mold-making process itself.

By contrast, the case file for Company O indicated that local exhaust ventilation had been installed over both the furnace/pouring area and the finishing area, but not in the mold-making area. With this combination of controls, the 8-hour TWA exposure of an employee who performed mold making as well as pouring was limited to 56.4 μg/m³.

Case file T notes that engineering controls have been installed on the furnace and grinders. In this foundry, the mold maker's 8-hour TWA exposure level was 3.75 μg/m³.

Company S had not installed engineering controls on the furnace or in its grinding oeprations and this company's mold maker had an exposure of 67 μg/m³.

Foundry W has mold-making employee exposures of 25.2 and 54 μg/m³. The case file contains no information on the methods this foundry

uses to control exposure levels in this area, however this foundry has not installed engineering controls on the furnace (see below).

These data support OSHA's earlier findings that exposures in molding operations are due primarily to lead emissions from other operations in the foundry, such as melting and pouring, that involve temperatures that generate fumes. The other major source of lead emissions in foundries that may also contribute to elevated readings in the molding operation is grinding (finishing), which involves the mechanical abrasion of leaded-alloy castings. Because the mold-making operation itself does not substantially contribute to elevated employee lead levels, small foundries are unlikely to incur costs to control exposures in mold-making operations to any of the alternative engineering control levels. Therefore, OSHA has included the costs associated with reducing the few mold-making employee exposures that exceed the engineering control alternatives, in the costs shown for the controlling employee exposures in melting/pouring and grinding operations.

Melting and Pouring

The exposure data contained in the case files [Ex. 585] indicate that, when no local exhaust ventilation is used, melting and pouring operations are associated with employee lead exposures that exceed any of the alternative engineering control levels most of the time. Foundries S, W, C, X, and FF (1983) had no engineering controls in their furnace, melting, and pouring areas. The exposures information (8-hour TWA) for melting/pouring workers in these facilities was as follows:

- Company S—86 and 100 $\mu g/m^3$;
- Company W—79 $\mu g/m^3$;
- Company C—226, 496, 299, 202, 223, 36, and 264 $\mu g/m^3$;
- Company FF—63.5, 116, 61.4, and 499 $\mu g/m^3$; and
- Company X—74 and 62 $\mu g/m^3$.

These data demonstrate that furnace/melting/pouring employee exposures may be excessive if the furnace and pouring operations are uncontrolled.

Five case-file foundries had local exhaust ventilation on their furnaces but no controls on the crucible or the mold-pouring operation. The 8-hour TWA exposure data for employees in these foundries who were engaged in melting and pouring were:

- Company K—44 and 53 $\mu g/m^3$;
- Company O—56.4 $\mu g/m^3$ and 184 $\mu g/m^3$ (the employee who was exposed to 184 $\mu g/m^3$ was also engaged in grinding operations for a substantial part of the work shift);
- Company T—3.75 and 29.8 $\mu g/m^3$;
- Company D—12.9, 33.2, and 34 $\mu g/m^3$; and
- Company N—39 $\mu g/m^3$.

The case file for Company O indicates that a canopy hood with a face velocity of 150 to 200 fpm and an airflow rate of approximately 5500 CFM was used over the furnace. Company D installed a hood over both of its furnaces; the face velocities for the two hoods ranged, at various points at the face, from 0 to 150 fpm and 0 to 200 fpm. The other case files (Foundries K, N, and T) report that local exhaust ventilation is in use in these foundries but present no operational information about these control systems.

Three case-file foundries have installed local exhaust ventilation on both the furnace and the crucible. The additional ventilation on the crucible serves to control emissions during the transport of the crucible from the furnace area to the pouring area and also controls lead emissions during mold pouring. The sampling results for employees involved in melting and pouring operations in these well-controlled foundries were as follows:

- Company R—41 and 27 $\mu g/m^3$;
- Company Q—21, 65, and 23 $\mu g/m^3$; and
- Company FF—27, 19, 22, 24, and 48 $\mu g/m^3$.

Case files R and Q show that the foundry that was the subject of these two inspections has installed local exhaust ventilation having a face velocity of 100 fpm on the furnace. The local exhaust on the crucible has a face velocity of 800 fpm.

Foundry FF was inspected for a second time after local exhaust ventilation had been installed over the furnace and on the crucible (1985). This case file notes that the hood over the furnace provided 2,500 CFM and that a newly installed Hawley Trav-L-Vent system had an exhaust rate of 2,500 CFM.

The data described above demonstrate that, in the absence of any ventilation in the melting/pouring area, employee exposures to lead may exceed all of the alternative engineering control levels. On the other hand, where small foundries have applied a ventilation capacity of about 6,000 CFM in the melting/pouring area, employee exposures can be maintained at or below any of the alternative engineering control levels. Therefore, OSHA has based its cost estimate for each of the alternative engineering control levels on the installation of a 6,000 CFM ventilation system. The unit costs for installation of these systems are $4/CFM and $7/CFM in very small and small foundries, respectively; these are the same unit costs used previously by OSHA (54 *FR* 29240, 29141) and account for all of the aspects of ventilation systems. (The lower unit cost estimate for very small foundries is a reflection of their reduced need for mechanical equipment, principally ductwork [Ex. 643, p. 8; Tr., 839–40].)

Shakeout Operations

The foundry case files contain little information on the exposures of employees performing shakeout operations. Only one case file (Foundry K) reported an exposure measurement (47 $\mu g/m^3$) for an employee engaged in a shakeout operation; other case files noted that employees in small foundries perform shakeout only during some portion of their shifts but do not do shakeout as their main activity. In addition, the summary exposure data for small foundries provided by AFS do not separately identify shakeout as an operation associated with significant exposure to lead. Thus, the information in the docket suggests that, for very small and small foundries, shakeout operations are not a substantial source of employee lead exposure; therefore, employers are not estimated to incur costs to achieve compliance with any of the alternative engineering control levels in the shakeout operation.

Finishing

Five of the compliance case files [Ex. 585] contained exposure data for employees working in small foundries that had not installed engineering controls in the finishing area; finishing equipment includes cut-off saws, grinders, trimmers, and snaggers. The exposure data for finishing operations in small foundries are as follows:

- Company C—420, 268, 88, 80, 79, 55, and 19 $\mu g/m^3$;
- Company K—48 $\mu g/m^3$;
- Company FF—170 and 157 $\mu g/m^3$ (these data represent uncontrolled conditions in Company FF (1983). Later data in the case file reflect controlled conditions in this foundry's finishing operations (1985));
- Company W—727 $\mu g/m^3$ (the compliance officer noted that this operation was enclosed only by a partial hood); and
- Company S—97 $\mu g/m^3$ (the compliance officer noted that the local exhaust system for this area was disconnected at the time of the inspection).

Five foundry case files contained employee exposure data for finishing operations that had been controlled using local exhaust ventilation. The exposure data for employees engaged in these operations were as follows:

- Company Q—6.6, 15, 60, 80, and 80 $\mu g/m^3$;
- Company R—41, 23, and 8 $\mu g/m^3$;
- Company T—63.3 $\mu g/m^3$ (this employee also engaged in molding and pouring operations);
- Company O—184 $\mu g/m^3$ (this employee also engaged in melting/pouring activities); and
- Company FF—ND, 4.3, 9, 9, 16, 38, 79, 130, and 1,000 $\mu g/m^3$.

Case file Q contains no data on the airflow or face velocities of the local exhaust systems used in the finishing operations. Case file R, which represents a later inspection of the same facility, notes that the face velocities at the grinding work station were between 150 and 200 fpm. The case file also reports that the ventilation at the finishing work stations had noticeably improved since the previous inspection.

In the case file for Company O, which pours leaded brass 60 to 65 percent of the time, data indicated that local exhaust ventilation on the grinding operation was approximately 90 CFM. The case file also noted that the duct from this local exhaust system was 13 inches in circumference (i.e., a 4-inch diameter duct). The duct velocity through such a duct was calculated using the formula:

$$V_d = \frac{Q}{A_d}$$

where:
V_d is the duct velocity (ft/min),
Q is the air flow rate (CFM),
A_d is the duct's cross-sectional area (ft^2).

For the system employed by Company O, the duct velocity was estimated to be 1,030 fpm, less than one-fourth the 4,500 fpm duct velocity recommended by the AFS [Ex. 684–4] and the American Conference of Governmental Industrial Hygienists [Ex. 583–13, pp. 5–48 to 5–52].

Company FF also has installed local exhaust ventilation in its grinding operations that provides face velocities of 200 to 600 fpm. Assuming equipment dimensions that are similar to those found at Company O, the exhaust rate is estimated to be in the range of 72 to 215 CFM.

Foundries Q–R and FF have achieved employee exposures during grinding that fall below 100 $\mu g/m^3$ by using 100 to 200 CFM on their grinding wheels.

Based on these data, the costs for very small and small foundries to achieve a 100 or 150 $\mu g/m^3$ engineering control level will be those for installing 200 CFM on the grinding stations. To achieve compliance with the 75 $\mu g/m^3$ engineering control alternative, cost estimates are based on air flow rates of 500 CFM, which correspond to the duct velocity of 4,500 fpm recommended by the AFS [Ex. 689–4] and the ACGIH [Ex. 583–13].

Though no information was provided in the case files regarding the extent to which housekeeping measures were employed in controlled or partially controlled foundries, OSHA estimates that approximately 50 percent of the level of effort previously estimated (see 54 FR 29241) to be required to achieve the PEL of 50 $\mu g/m^3$ in small, primary brass and bronze foundries will be required to achieve either of the alternative engineering control levels considered here. Thus, OSHA estimates that one-half hour of additional labor will be required at an average wage of $9.59/hour, over a 7 day work week and 50 weeks of the year.

Annual costs for additional housekeeping for small plants are thus estimated to be $1,678 per year. Annual housekeeping costs for very small plants are estimated to be 50 percent of those for small plants, or $839.

Costs for annual cleaning for small foundries included in the July 11 analysis were not included in the present analysis due to OSHA's refined estimates of small foundry technology discussed above. For similar reasons additional costs for heating make-up air were not included in the present analysis, since small foundries do not require extensive air handling systems.

The exposure profiles, together with the detailed information provided in the case files described above, have allowed OSHA to classify very small and small foundries into three categories with respect to current control status: 1) those plants that have implemented controls in both primary areas of exposure (melt/pour and finishing—"controlled plants"); 2) those plants that have controlled one of the two major exposure areas ("partially controlled" plants); and 3) those plants that are uncontrolled. Additionally, the data suggest that foundries that have not controlled one of these two major exposure areas most likely have not controlled either. The data also show that plants that have attempted to control exposures to the 200 $\mu g/m^3$ limit have in fact limited exposures to 100 $\mu g/m^3$. In melt/pour operations, a level of 75 $\mu g/m^3$ has been reached. OSHA has not, therefore, estimated costs for an engineering control alternative of 150 $\mu g/m^3$, since the costs expended to achieve 150 will achieve a 100 $\mu g/m^3$ engineering control level.

Tables 19 through 24 show the estimated annual costs of compliance for very small and small foundries associated with achieving engineering control alternatives of 75 $\mu g/m^3$ and 100 $\mu g/m^3$.

TABLE 19.—ESTIMATED COSTS OF COMPLIANCE FOR UNCONTROLLED SMALL FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM LEADED ALLOYS

[10–19 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 $\mu g/m^3$ Engineering control level:			
Melt/pour	$18,497	$12,600	$31,097
C–O Saw	514	350	864
Grinding/finishing	1,541	1,050	2,591
Labor-housekeeping	0	1,678	1,678
Total	20,552	15,678	36,230
100 ug/m3 Engineering control level:			
Melt/pour	18,497	12,600	31,097
C–O Saw	206	140	346
Grinding/finishing	617	420	1,037

TABLE 19.—ESTIMATED COSTS OF COMPLIANCE FOR UNCONTROLLED SMALL FOUNDRIES PRODUCING CASTINGS PRIMARILY FROM LEADED ALLOYS—Continued

[10–19 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
Labor-housekeeping	0	1,678	1,678
Total	19,319	14,838	34,157

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 20.—ESTIMATED COSTS OF COMPLIANCE FOR PARTIALLY CONTROLLED SMALL FOUNDRIES PRODUCING CASTING PRIMARILY FROM LEADED ALLOYS

[10–19 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 μg/m³ Engineering control level:			
Melt/pour	$18,497	$12,600	$31,097
Labor-housekeeping	0	1,678	1,678
Total	18,497	14,278	32,775
100 μg/m³ Engineering control level:			
Melt/pour	18,497	12,600	31,097
Labor-housekeeping	0	1,678	1,678
Total	18,497	14,278	32,775

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 21.—ESTIMATED COSTS OF COMPLIANCE FOR UNCONTROLLED SMALL FOUNDRIES PRODUCING CASTING PRIMARILY FROM NON-LEADED ALLOYS

[10–19 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 μg/m³ Engineering control level:			
Melt/pour	$6,166	$4,200	$10,366
C–O Saw	514	350	864
Grinding/finishing	1,541	1,050	2,591
Labor-housekeeping	0	1,678	1,678
Total	8,221	7,278	15,499
100 μg/m³ Engineering control level:			
Melt/pour	6,166	4,200	10,366
C–O Saw	206	140	346
Grinding/finishing	617	420	1,037
Labor-housekeeping	0	1,678	1,678
Total	6,988	6,438	13,426

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 22.—ESTIMATED COSTS OF COMPLIANCE FOR PARTIALLY CONTROLLED SMALL FOUNDRIES PRODUCING CASTING PRIMARILY FROM NON-LEADED ALLOYS

[10–19 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 μg/m³ Engineering control level:			
Melt/pour	$6,166	$4,200	$10,366
Labor-housekeeping	0	1,678	1,678
Total	6,166	5,878	12,044
100 μg/m³ Engineering control level:			
Melt/pour	6,166	4,200	10,366
Labor-housekeeping	0	1,678	1,678
Total	6,166	5,878	12,044

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 23.—ESTIMATED COSTS OF COMPLIANCE FOR UNCONTROLLED VERY SMALL FOUNDRIES

[1–9 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 μg/m³ Engineering control level:			
Melt/pour	$3,523	$2,400	$5,923
Grinding/finishing	587	400	987
Labor-housekeeping	0	839	839
Total	4,110	3,639	7,749
100 μg/m³ Engineering control level:			
Melt/pour	3,523	2,400	5,923
Grinding/finishing	235	160	395
Labor-housekeeping	0	839	839
Total	3,758	3,399	7,157

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 24.—ESTIMATED COSTS OF COMPLIANCE FOR PARTIALLY CONTROLLED VERY SMALL FOUNDRIES

[1–9 employees]

Emissions source or control	Annualized capital	Annual O&M	Total annual
75 μg/m³ Engineering control level:			
Melt/pour	$3,523	$2,400	$5,923
Labor-housekeeping	0	839	839
Total	3,523	3,239	6,762
100 μg/m³ Engineering control level:			
Melt/pour	3,523	2,400	5,923
Labor-housekeeping	0	839	839
Total	3,523	3,239	6,762

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

OSHA's cost methodology and estimates reflect the Agency's findings with respect to very small and small foundries' current control status; thus, the costs in tables 19 through 24 represent costs for those plants in the partially controlled and uncontrolled categories. The tables present separate cost estimates for very small (1–9 employees) and small (10–19 employees) foundries.

To achieve the respective engineering control alternatives in melt/pour operations, very small foundries would have only one furnace to control. Small foundries producing primarily non-leaded alloys would need to install engineering controls for one melt/pour operation, and small foundries producing primarily leaded castings would need to install controls for three melt/pour operations. To achieve the respective engineering control levels in finishing operations, very small foundries would need to install new controls or upgrade existing controls at two finishing stations while small plants would need to install or upgrade controls on one cut-off saw and three other finishing stations.

For example, in Table 19, annualized capital costs for melt/pour operations were calculated thus:

6000 CFM × 3 emission sites × $7/CFM = $126,000;
$126,000 × 0.1468 (annualization factor) = $18,497.

In Table 23, annualized capital costs were computed thus:

6000 CFM × 1 emission site × $4/CFM = $24,000;
$24,000 × 0.1468 = $3,523.

As in OSHA's previous analysis [54 *FR* 29241], capital costs were annualized using a 10 percent cost of capital and assuming an equipment life of 12 years. Annual operating costs were estimated to be 10 percent of capital costs.

Table 25 summarizes the costs for foundaries with fewer than 20 employees to achieve an engineering control alternative of 75 or 100 μg/m³. Costs for very small foundries will range from $6,762 for a partially controlled plant (to achieve either engineering control alternative) to $7,749 for an uncontrolled plant to achieve an engineering control alternative of 75 μg/m³. Costs for small foundries will range from $12,044 (for a partially controlled plant primarily pouring non-leaded alloys to achieve either engineering control alternative) to $36,230 (for an uncontrolled plant primarily pouring brass and bronze to achieve an engineering control alternative of 75 μg/m³).

TABLE 25.—COSTS OF COMPLIANCE FOR SMALL PLANTS

Type of plant	C(75)	C(75p)	C(100)	C(100p)
Very small (1–9)	$7,749	$6,762	$7,157	$6,762
Small:				
Primarily leaded	36,230	32,775	34,157	32,775
Primarily non-leaded	15,499	12,044	13,426	12,044

TABLE 25.—COSTS OF COMPLIANCE FOR SMALL PLANTS—Continued

Type of plant	C(75)	C(75p)	C(100)	C(100p)

WHERE:
C(75p)= costs required to bring a partially controlled plant into compliance with a 75 μg/m³ Engineering Control Level.
C(100p)= costs required to bring a partially controlled plant into compliance with a 100 μg/m³ Engineering Control Level.
C(75)= costs required to bring an uncontrolled plant into compliance with a 75 μg/m³ Engineering Control Level.
C(100)= costs required to bring an uncontrolled plant into compliance with a 100 μg/m³ Engineering Control Level.

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Table 26 provides a tabulation of the total annual costs of compliance, industry wide, for all small foundries. Total annual costs for foundries with 1–19 employees under a 75 μg/m³ engineering control alternative are estimated to be $3,510,639. Under an engineering control alternative of 100 μg/m³, total annual costs are estimated to be $2,859,782. (Total annual costs industry wide do not include plants estimated to shift away from leaded alloys—see Economic Feasibility below for calculations.)

TABLE 26.—COSTS OF COMPLIANCE—INDUSTRY WIDE

Type	Number estimated to require controls	Cost of compliance	Industry wide cost
75 μg/m³ Engineering Control Level			
Very small:			
Partially controlled	33	6,762	$222,056
Uncontrolled	140	7,749	1,082,853
Small:			
Primarily leaded:			
Partially controlled	9	32,775	279,897
Uncontrolled	37	36,230	1,326,018
Primarily non-leaded:			
Partially controlled	8	12,044	92,063
Uncontrolled	33	15,499	507,752
Total	3,510,639		
100 μg/m³ Engineering Control Level			
Very small:			
Partially controlled	9	6,762	63,445
Uncontrolled	140	7,157	1,000,086
Small:			
Primarily leaded:			
Partially controlled	2	32,775	79,971
Uncontrolled	37	34,157	1,250,142
Primarily non-leaded:			
Partially controlled	2	12,044	26,304
Uncontrolled	33	13,426	439,835
Total	2,859,782		

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

Economic Feasibility

Economic impacts for foundries were determined based on the cost estimates developed above and the financial models for the foundry industry presented in OSHA's previous foundry analysis (54 FR 29243).

Table 27 provides a summary of the estimated control status of small foundries. (Information in the record was not sufficient to allow control status to be estimated separately for primarily leaded and primarily non-leaded operations.) For example, the chart indicates that 37 percent of all small foundries currently employ no controls on their melt/pour ("hot") operations, and that these foundries (less those qualifying under the 30 day exclusion rule, as discussed below) will incur costs to come from an uncontrolled condition into compliance with the 75 μg/m³ engineering control level. Thirty-two percent of all small plants would incur costs at the 100 μg/m³ engineering control alternative in "hot" operations. Also, 30 percent of all small foundries currently employ no controls in finishing operations. Consequently, these foundries will incur costs required to come from an uncontrolled condition in finishing, into compliance with either the 75 μg/m³ or the 100 μg/m³ engineering control alternatives. As noted above, information in the record indicates that foundries which have not controlled one of these two major exposure areas most likely have not controlled either; thus, OSHA estimates that 30 percent of all small foundries are currently totally uncontrolled, that 7 percent (37–30) are partially controlled with respect to achieving the 75 μg/m³ engineering control alternative, and that 2 percent (32–30) are partially controlled with respect to achieving the 100 μg/m³ engineering control alternative. (Partially controlled plants have controlled finishing operations, but have not controlled melt/pour operations.)

TABLE 27.—CURRENT CONTROL STATUS AND ASSOCIATED COMPLIANCE COSTS

75 μg/m³ engineering control level	Percent of plants controlled to 75 (cost)	Percent of plants controlled to 100 (cost)	Percent of plants uncontrolled (cost)
Operation:			
Melt/pour	63 (no cost)	0	37 (C75)
Finishing	70 (no cost)	0	30 (C75)
Partially controlled			7 (C75p)
100 μg/m³ engineering	**Percent of plants controlled to 100 (cost)**	**Percent of plants uncontrolled (cost)**	
Operation:			
Melt/pour	68 (no cost)	32 (C100)	
Finishing	70 (no cost)	30 (C100)	
Partially controlled		2(C100p)	

Where:
C(75p)=costs required to bring a partially controlled plant into compliance with a 75 μg/m³ Engineering Control Level.
C(100p)=costs required to bring a partially controlled plant into compliance with a 100 μg/m³ Engineering Control Level.
C(75)=costs required to bring an uncontrolled plant into compliance with a 75 μg/m³ Engineering Control Level.
C(100)=costs required to bring an uncontrolled plant into compliance with 100 μg/m³ Engineering Control Level.

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis. Derived from Table 16.

A profit profile for small foundry producers was developed to enable the Agency to identify the economic impact on both lead-related and total profits for small plants. This profile appears in Table 28. Financial data in the record indicates that profit levels vary among small foundries. Dun and Bradstreet Industry Norms for 1986 [Ex. 571, p. 14] show that the lowest quartile of very small primary brass, bronze, and copper foundries typically show a net loss (no profit) while very small foundries in the highest quartile record profits at 3 and one-half times the median profit level. For the very small foundry category, 25 percent of plants primarily producing leaded castings are estimated to earn profits of $20,825 or more. In the small primary brass, bronze, and copper foundry category, the Dun and Bradstreet profile indicates that for foundries in the lowest quartile, profits are one-half the median profit level and for small foundries in the highest quartile, profits are at least 2 times the median. For foundries primarily producing non-leaded castings, overall profits for very small and small foundries in the highest quartile are estimated to be at least 2 times the median, and the median profit level is at least 3 and one-half times as great as overall profits for foundries in the lowest quartile.

TABLE 28.—PROFIT PROFILE FOR SMALL NONFERROUS FOUNDRIES, LEADED CASTINGS ONLY

Type	Lower quartile	Median	Upper quartile
Very small primarily leaded	(loss)	$5,950	$20,825
Small primarily leaded	$22,375	44,750	89,500
Profit Profile for Small Nonferrous Foundries, All Castings			
Very small primarily non-leaded	(loss)	7,940	15,880
Small primarily non-leaded	17,046	59,660	119,320

*In this analysis, OSHA has focused on total profits for nonferrous foundries primarily involved in the production of non-leaded castings. OSHA believes that casting producers with less than 50 percent of capacity dedicated to leaded castings, will subsidize leaded operations from profits from non-leaded operations. Reasons for this include the need to maintain product diversity in order to attract and satisfy new or existing customers. Also, some foundries will experience market share increase for leaded castings as a result of this rulemaking. These foundries will find demand for leaded castings improved at some point in the future. Thus, it may be advantageous for producers to "wait it out" by utilizing total profits to subsidize leaded operations.

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis and Dun and Bradstreet Industry Norms (1986).

After the profit profile was developed, OSHA calculated impact ratios for each engineering control alternative. (Table 30 presents these ratios.) The ratios were calculated by foundry type, current control scenario, and profit level. Tax deductibility of compliance costs was considered in the analysis; care was taken to compute before-tax profit before subtracting annual costs. After subtracting annual costs, the appropriate average corporate income tax rate, in this case, 15 percent, was then reapplied to determine after-tax profit net of costs. The ratios represent the proportion of profits which would be required to finance the costs of compliance, assuming all compliance costs were absorbed.[3]

Once profit impacts were computed, the reduction in profit was compared to the estimated maximum profit reduction that a foundry could sustain without causing return on net worth to fall to an unacceptable level. Based on Dun and Bradstreet Industry Norms for 1986, "small" primary brass, bronze, and copper foundries were earning an average return on net worth of about 16 percent in 1986. OSHA estimates that a profit reduction of up to 65 percent could be absorbed by this sector. Any further profit reduction would lower the return on net worth below 5 percent. OSHA believes that if the rate of return falls below this level for an extended period of time, firms will choose to cease operations and seek alternative

[3] OSHA concludes that cost pass-through will not be an option for small foundries. Factors which preclude this strategy include substitution of lighter weight metals and plastics for brass and bronze, foreign sourcing of copper-based castings, and the development of new technologies, such as powdered metal technology. Additionally, competition from larger, more automated, efficient foundries ensures that raising prices will result in significant losses in market share for small producers.

investments. At this level of return, liquid assets can be placed into essentially risk-free investments. For "very small" foundries, average return on net worth is estimated at about two-thirds that of small plants or about 10–11 percent. OSHA estimates that a profit reduction of up to 50 percent would allow a very small foundry to maintain an acceptable rate of return.

The first step in estimating potential production losses, as measured by plant closures, was to identify the number of small plants that would be affected by an engineering control level of 75 $\mu g/m^3$ or 100 $\mu g/m^3$. Table 29 provides a summary of necessary calculations for each engineering control alternative. In column one, the total number of foundries in each size and production category are presented. In column two, OSHA presents its estimate of the percentage of plants estimated to be uncontrolled or partially controlled and column three shows the number of plants which require controls. Important legal, technical and economic considerations needed to be factored into the analysis in order to further refine the estimate of affected plants.

TABLE 29.—ESTIMATED NUMBER OF SMALL PLANTS AFFECTED

Type of plant	All plants	Percent estimated to be uncontrolled or partially controlled	Number uncontrolled or partially controlled	Percent estimated to qualify for 30 day exclusion	Gross number estimated to require controls	Production shift factor	Net number estimated to be affected
75 $\mu g/m^3$ Engineering Control Level							
Very small (1–9):							
Primarily leaded	248						
Partially controlled		7	17	0	17	0	17
Uncontrolled		30	74	0	74	0	74
Primarily non-leaded	245						
Partially controlled		7	17	5	16	5	15
Uncontrolled		30	74	5	70	5	66
Small:							
Primarily loaded	122						
Partially controlled		7	9	0	9	0	9
Uncontrolled		30	37	0	37	0	37
Primarily non-leaded	121						
Partially controlled		7	8	5	8	5	8
Uncontrolled		30	36	5	34	5	33
Total	736		272		265		259
100 μ/m^3 Engineering Control Level							
Very small (1–9):							
Primarily leaded	248						
Partially controlled		2	5	0	5	0	5
Uncontrolled		30	74	0	74	0	74
Primarily non-leaded	245						
Partially controlled		2	5	5	5	5	4
Uncontrolled		30	74	5	70	5	66
Small:							
Primarily leaded	122						
Partially controlled		2	2	0	2	0	2
Uncontrolled		30	37	0	37	0	37
Primarily non-leaded	121						
Partially controlled		2	2	5	2	5	2
Uncontrolled		30	36	5	34	5	33
Total	736		236		230		223

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

For example, the lead standard contains an exclusion rule which states that establishments in which no employee is exposed in excess of the 50 $\mu g/m^3$ PEL for more than 30 days per year do not have to install engineering controls. Evidence in the record indicates that some foundries will fall into this category. As reported by OSHA in the July 11 **Federal Register** (p. 29243), over one-half of the foundries pouring leaded alloys primarily produce non-leaded castings. Among the 50 percent of small foundries that primarily produce non-leaded castings, about 63 percent are estimated to incur no costs (the same percent was also applied to primarily lead producing firms) because they are currently producing lead in a controlled environment or because the quantities of leaded alloys being poured are very small and no apparent exposure problem exists. Among the remaining small foundries (pouring primarily non-leaded alloys) which appear to require some engineering controls in order to reduce exposure levels, some will qualify for the 30 day exclusion rule. OSHA estimates that about five percent of small foundries which pour primarily non-leaded alloys and appear to be uncontrolled or partially controlled, should qualify for this exclusion. No plants primarily pouring leaded alloys are expected to qualify for the exclusion. Columns four and five in Table 29 present the exclusion effect; the exclusion reduces the number of plants which will require engineering controls.

For independent foundries primarily engaged in the production of non-leaded castings, the decision must be made whether or not to offset the regulatory costs associated with the lead-related operations against the profits earned on non-leaded castings. An alternative for these foundries would be to shift away from leaded or high-leaded alloys, as did the foundry in case file "C." This shift in production did not result in the closure of foundry "C," the affected plant continued to operate but discontinued producing high-lead alloy products.

(Such a product shift should strengthen product demand for those foundries which continue to do leaded work, enabling them to better absorb financial costs which result from this OSHA rule.) OSHA believes that the option to discontinue lead related products will be elected by some primarily non-lead producing firms which do not qualify under the 30 day exclusion. OSHA estimates that about 5 percent of such plants will elect to cease producing leaded alloys rather than absorb compliance costs (column 6 in Table 29).

The final column in Table 29 shows the number of plants estimated to require new or additional controls (total number affected). OSHA estimates that 172 very small plants and 87 small plants will require capital expenditures in order to add or improve engineering controls under a 75 $\mu g/m^3$ engineering control level. Under an engineering control alternative of 100 $\mu g/m^3$, 149 very small plants and 74 small plants will require capital expenditures.

Separate impact ratios for firms doing primarily leaded casting and those doing primarily non-lead casting were calculated (Table 30) and OSHA estimated the extent of production losses attributable to the engineering control alternatives (Table 31). Based on the profit reduction ratios developed in Table 30, OSHA estimates that, under either engineering control alternative, about 35 percent of all very small plants requiring controls will be able to finance costs from profits and continue operation under the standard; these plants will experience maximum lead-related profit reductions of about 50 percent. OSHA estimates that 50 percent of all affected small foundries primarily pouring leaded alloys will continue operation under the standard; the median firm will experience profit reductions of less than 70 percent.

TABLE 30.—PROFIT REDUCTION FACTORS FOR SMALL FOUNDRIES, LEADED CASTINGS ONLY

Type	Number	Lower quartile	Median	Upper quartile
75 $\mu g/m^3$ Engineering Control Level				
Very small primarily leaded:				
Partially controlled	17	(loss)	0.96603	0.27601
Uncontrolled	74	(loss)	1.10706	0.31630
Small primarily leaded:				
Partially controlled	9	1.24508	0.62254	0.31127
Uncontrolled	37	1.37634	0.68817	0.34408
100 $\mu g/m^3$ Engineering Control Level				
Very small primarily leaded:				
Partially controlled	5	(loss)	0.96603	0.27601
Uncontrolled	74	(loss)	1.0224	0.29213
Small primarily leaded:				
Partially controlled	2	1.24508	0.62254	0.31127
Uncontrolled	37	1.29758	0.64879	0.32439

Source: Occupation Safety and Health Administration, Office of Regulatory Analysis.

TABLE 30.—PROFIT REDUCTION FACTORS FOR SMALL FOUNDRIES, ALL CASTINGS

Type	Number	Lower quartile	Median	Upper quartile
75 $\mu g/m^3$ Engineering Control Level				
Very small primarily non-leaded:				
Partially controlled	15	(loss)	0.72391	0.36196
Uncontrolled	66	(loss)	0.82960	0.41480
Small primarily non-leaded:				
Partially controlled	8	0.60057	0.17159	0.08580
Uncontrolled	33	0.77286	0.22082	0.11041
100 $\mu g/m^3$ Engineering Control Level				
Very small primarily non-leaded		(loss)	0.72391	0.36196
Partially controlled	4	(loss)	0.76619	0.38309
Uncontrolled	66			
Small primarily non-leaded:				
Partially controlled	2	0.60057	0.17159	0.08580
Uncontrolled	33	0.66948	0.19128	0.09564

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE 31.—AFFECTED PLANTS UNABLE TO FINANCE COMPLIANCE COSTS

Type of plant	Net number estimated to be affected	Percent estimated to continue operation by absorbing costs into profits:		Number estimated to continue operation by absorbing costs into profits:		Captive operations estimated to continue production	Number estimated to cease production
		Leaded	Other	Leaded	Other		
75 μg/m³ Engineering Control Level							
Very small (1-9) primarily leaded:							
Partially controlled	17	35%		6		1	10
Uncontrolled	74	35%		26		2	46
Primarily non-leaded:							
Partially controlled	15		35%		5	0	10
Uncontrolled	66		35%		23	2	41
Small primarily leaded:							
Partially controlled	9	50%		4		1	4
Uncontrolled	37	50%		18		2	17
Primarily non-leaded:							
Partially controlled	8		70%		5	1	2
Uncontrolled	33		70%		23	2	8
Total	259			54	56	11	138
100 μg/m³ Engineering Control Level							
Very small (1-9) primarily leaded:							
Partially controlled	5	35%		2		0	3
Uncontrolled	74	35%		26		2	46
Primarily non-leaded:							
Partially controlled	4		35%		2	0	2
Uncontrolled	66		35%		23	2	41
Small primarily leaded:							
Partially controlled	2	50%		1		0	1
Uncontrolled	37	50%		18		2	17
Primarily non-leaded:							
Partially controlled	2		70%		2	0	0
Uncontrolled	33		70%		23	2	8
Total	223			47	50	8	118

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis.

OSHA estimates that about 35 percent of very small plants primarily producing non-leaded castings should be able to finance the costs of the rulemaking from overall profit. The median firm in this subsector still experiences some overall profit after the cost of controls has been deducted. For small plants pouring primarily non-leaded alloys, about 70 percent are estimated to be able to finance the costs of the rule, since even the lowest quarter of these foundries will experience maximum reductions in overall profits of 77 percent. Thus, OSHA estimates that about 110 plants will continue operations by financing the rule from profits under an engineering control level of 75 and about 97 plants will continue operations by financing the rule from profits under an engineering control level of 100 (see Table 31).

OSHA factored one final adjustment into its estimates of production losses for small foundries. For captive foundries, a decision will be made by the parent operation whether to continue to produce leaded castings. OSHA believes that some of these operations will continue to produce leaded castings as part of a broader corporate strategy to attract and keep customers. That is, the parent company will carry a marginal operation if a diversified service or product mix satisfies customer demand for occasional brass and bronze products.

Captive foundries are found in all size categories and OSHA estimates that 5 percent of firms with a cost impact will remain subsidized by a parent company which is willing to absorb the loss in order to maintain product diversity.

In sum, Table 31 presents OSHA's calculations with respect to the responses of small foundries to this regulatory action. OSHA estimates that about 19 percent of all 736 small foundries will cease operations under an engineering control level of 75 μg/m³; under an engineering control level of 100 μg/m³, an estimated 16 percent of all small foundries will cease operations. The decline in employment in small nonferrous foundries was estimated to be 1,000 (16 percent) and 850 (14 percent) employees, respectively.

OSHA also performed a sensitivity analysis in order to evaluate the economic impact of using different assumptions and expectations of industry's response to the proposed rule change. For example, plants may choose to cease operation if their return on net worth drops below 10 percent (instead of the 5 percent estimate used above). In addition, plants may not be able to change from lead production to the production of non-leaded alloys (product shifting)[4] and no corporate support may be provided to captive operations. Each of these alternative assumptions are incorporated in the impact effects shown in Table 32. Under these assumptions, 203 small foundries (about 28 percent of all small foundries) are estimated to cease operations under an engineering control level of 75 μg/m³ and 176 (about 24 percent) are estimated to cease operations under an engineering control level of 100 μg/m³. Associated employment losses were estimated to be 1,455 (24 percent) and 1,240 (20 percent) employees, respectively.

[4] OSHA notes that the product shift effect as described in this analysis may lead to excess capacity for certain non-leaded castings. For example, a foundry that rededicates a furnace used to melt brass alloy "A" to melting a non-leaded aluminum alloy "B" has in effect increased industry production capacity for alloy "B." OSHA has not evaluated the adverse profit impact this change would have on non-lead castings.

TABLE 32.—AFFECTED PLANTS UNABLE TO FINANCE COMPLIANCE COSTS ASSUMING POST-REGULATORY RETURN ON NET WORTH OF 10 PERCENT, NO PRODUCT SHIFT EFFECT, AND NO CORPORATE SUPPORT FOR CAPTIVE OPERATIONS

Type of plant	Net number estimated to be affected	Percent estimated to continue operation by absorbing costs into profits:		Number estimated to continue operation by aborbing costs into profits:		Number estimated to cease production
		Leaded	Other	Leaded	Other	
75 μg/m³ Engineering Control Level						
Very Small (1–9) primarily leaded:						
Partially controlled	17	10		2		15
Uncontrolled	74	10		7		67
Primarily non-leaded:						
Partially controlled	16		10		2	14
Uncontrolled	70		10		7	63
Small primarily leaded:						
Partially controlled	9	40		3		6
Uncontrolled	37	40		15		22
Primarily non-leaded:						
Partially controlled	8		60		5	3
Uncontrolled	34		60		21	13
Total	265			27	35	203
100 μg/m³ Engineering Control Level						
Very Small (1–9) primarily leaded:						
Partially controlled	5	10		0		5
Uncontrolled	74	10		7		67
Primarily non-leaded:						
Partially controlled	5		10		0	5
Uncontrolled	70		10		7	63
Small primarily leaded:						
Partially controlled	2	40		1		1
Uncontrolled	37	40		15		22
Primarily non-leaded:						
Partially controlled	2		65		1	1
Uncontrolled	34		65		22	12
Total	229			23	30	176

Source: Occupational Safety and Health Administration, Office of Regulatory Analysis

OSHA also computed impacts under an assumption that foundries engaged primarily in the production of non-leaded castings would finance the costs of the new engineering controls only from profits earned on leaded products. (In Table 28 the profit estimates were for total profits, from leaded and non-leaded products.) Under this scenario, OSHA estimates that an additional 27 foundries would stop producing leaded products under an engineering control level of 75 μg/m³ and an additional 21 foundries would stop producing leaded products under an engineering control level of 100 μg/m³. It should be noted that these firms are expected to continue producing non-leaded goods; only their lead related product lines would be discontinued. However, if the number of firms so affected were to be added to the 203 firms estimated above under the sensitivity analysis alternative assumptions, a total of 230 firms with 1,790 employees (representing about 31 percent of all small firms and 29 percent of total employment) would cease producton under an engineering control level of 75 μg/m³; under an engineering control level of 100 μg/m³, 197 firms with 1,505 employees would be affected (representing 27 percent of all small firms and 25 percent of small firm employment.

Evidence in the record suggests that 63 percent of small foundries comply with the existing 200 μg/m³ engineering control level. The evidence in the record also indicates that small plants which have implemented engineering controls have in fact been able to limit exposures consistently to 100 μg/m³ or lower. (There is no evidence that controlled foundries have experienced exposures in the 100 to 200 μg/m³ range for melting and pouring operations.)

Conversely, among the 37 percent of small foundries that are estimated to require controls for "hot" operations, one-half are estimated to be in violation of the present standard; in finishing operations, where 30 percent of small foundries will require controls, all are estimated to be in violation of the present standard. Apparently, many small foundries with very high exposure readings have taken no action to comply with engineering control requirements of the existing 200 μg/m³ engineering control requirement. Thus, while OSHA has estimated that imposing upon the small business portion of the industry a requirement to achieve 75 μg/m³ will result in production losses, the impact of lowering the engineering control requirement from its present level would have been far less if affected small firms were currently in compliance with the existing standard. In this analysis, costs that have been avoided by these firms are charged by OSHA against the new exposure limit; thus, the costs attributed to this rule are inflated by the amount of economic avoidance in past years.

In conclusion, OSHA finds that the impacts of this rulemaking will not threaten the competitive structure of the nonferrous foundry industry as a whole, and that it will not lead to undue concentration in this sector. As reported in the July 11 **Federal Register**, prevailing economic trends in the nonferrous foundry industry will lead to an industry composed of fewer but larger firms. Even the withdrawal of approximately 20 to 30 percent of small operations will not endanger the future economic prospects of those firms that remain in operation. On the contrary, the rationalization brought about by this rulemaking should improve the economic prospects for such firms. OSHA notes that many small operations

which require controls are those which have not complied with the present standard; these firms have been unable to successfully compete and make a profit even though they have avoided the costs which should have been incurred to comply with the existing regulation. Cost avoidance has permitted otherwise unprofitable firms to continue in existence, and substandard health conditions represent an economic subsidy to their continued operation.

Since small foundries account for about 20 percent of industry output, OSHA estimates that about 4 percent of industry capacity could be lost as a result of this rule. (Under the assumptions used in the sensitivity analysis, this figure rises to about 6–7 percent.) OSHA has included only small foundry closures in its estimate of capacity reduction; any closures among large foundries or capacity lost as a result of shifting away from leaded alloys, was not estimated. However, the anticipated losses are not expected to be of a magnitude which OSHA believes would lead to undue concentration of this sector.

Thus, based on a reanalysis of the data, OSHA finds a revised standard to be economically feasible for the nonferrous foundry industry. For small foundries (fewer than 20 employees), an engineering control level of 75 $\mu g/m^3$ will be enforced. Based on OSHA's July 11 Federal Register analysis of this sector, the engineering control level for large foundries (20 employees or more) is the PEL of 50 $\mu g/m^3$.

However, due to the inability of foundries to raise prices, and due to the substantial profit impacts that will be felt by some firms, OSHA has determined that an extended compliance period of 5 years is required for nonferrous foundries. The 5 year period will allow firms to phase in engineering controls, and provide opportunities for foundries to improve production efficiencies.

III. Regulatory Flexibility and Environmental Impact Determinations

Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act (Pub. L. 96–353, 94 Stat. 1664, 5 U.S.C. 601 et. seq.), OSHA has made an assessment of the impact of this rulemaking action on small entities. As reported in its July analysis (54 FR 29243–46), OSHA has determined that it is overly burdensome for small nonferrous foundries to comply with an engineering control level of 50 $\mu g/m^3$. The relatively low production volumes of these establishments would prevent many firms from being able to finance the costs of compliance. Additionally, small foundries are not able to take advantage of automatic techniques which enable larger plants to cut production costs and at the same time limit worker exposure. In its present analysis, however, OSHA finds that an engineering control level of 75 $\mu g/m^3$ is economically achievable for small foundries. Therefore, to avoid the kind of dislocation that is anticipated at a level of 50 $\mu g/m^3$, OSHA has set for small nonferrous foundries a level of 75 $\mu g/m^3$ for engineering and work practice controls.

Environmental Impacts

This rulemaking action has been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality NEPA regulations, and the Department of Labor's NEPA compliance procedures and is not anticipated to have a significant impact on the external environment.

For nonferrous foundries, the recommended techniques for controlling employee exposure to airborne lead principally involve the capture and containment of lead fume and dust. To comply with EPA and OSHA regulations, lead fume and dust are captured by ventilation systems or suppressed by wet methods. The effect of lowering the existing engineering control requirement will be to increase the amount of lead currently being contained either in the form of dust ventilated to baghouse collection systems or lead-contaminated solutions. This increase was judged by OSHA to present a small portion of all lead contaminated wastes currently being collected by any means. Thus, OSHA finds that there will be no significant environmental impact associated with this rulemaking. To the extent that wastes are disposed of in an environmentally acceptable manner, this regulation should provide some improvement of environmenal quality.

List of Subjects in 29 CFR Part 1910

Lead, Occupational safety and health.

IV. Authority

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), 29 CFR part 1911, and 33 U.S.C. 941. Part 1910 of title 29, Code of Federal Regulations, is hereby amended, for the reasons set forth in the preamble, by revising Table I of paragraph (e)(1) of § 1910.1025.

Signed at Washington, DC, this 22nd day of January 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

V. Amendments to Standard

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart Z of part 1910 is revised to read as follows:

Authority: Secs. 6, 8. Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Table Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, the Transitional Limits columns of Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR 1911 except for tha arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under sec. 107 of Contract work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 59 U.S.C. 553.

2. Part 1910 of title 29 of the Code of Federal Regulations is hereby amended in § 1910.1025 by revising Table I of paragraph (e)(1) to read as follows:

§ 1910.1025 Lead.

* * * * *

(e) *Methods of compliance*—(1) *Engineering and work practice controls.*

* * *

TABLE I—IMPLEMENTATION SCHEDULE

Industry [1]	Compliance dates		
	200 μg/m³	100 μg/m³	50 μg/m³
Primary lead production.	[3]	June 29, 1984 [2].	June 29, 1991.[2]
Secondary lead production.	[3]	June 29, 1984 [2].	June 29, 1986.[2]
Lead acid battery manufacture.	[3]	June 29, 1983 [2].	June 29, 1986.[2]
Automobile manufacture/solder grinding.	[3]	N/A	June 29, 1986.[2]
Electronics, gray iron foundries, ink manufacture, paints and coatings manufacture, wall paper manufacture, can manufacture and printing.	[3]	N/A	June 29, 1982.[2]

TABLE I—IMPLEMENTATION SCHEDULE—Continued

Industry [1]	Compliance dates		
	200 μg/m³	100 μg/m³	50 μg/m³
Brass and bronze ingot manufacture, lead chemical manufacture, and secondary copper smelting.	[3]	N/A	5 years.[4]
Non-ferrous foundries.	[3]	N/A	5 years.[4,5]
All other industries.	[3]	N/A	2½ years.[4]

[1] Includes ancillary activities located on the same worksite.

[2] This date is calculated by counting, from June 29, 1981 (the date when the United States Supreme Court denied certiorari and lifted the stay on the implementation of paragraph (e)(1)), the number of years specified for the particular industry in the original lead standard for compliance with the given airborne exposure level. The denial of certiorari followed a decision of the United States Court of Appeals for the District of Columbia Circuit finding compliance with paragraph (e)(1) to be feasible for the relevant industries.

[3] On the effective date of this standard, March 1, 1979. This continues an obligation from Table Z-2 of 29 CFR 1910.1000, which has been in effect since 1971 but was deleted from the Code of Federal Regulations upon the effectiveness of this standard.

[4] Expressed as the number of years from the date on which the court lifts the stay on the implementation of paragraph (e)(1) for the particular industry.

[5] Large non-ferrous foundries (20 or more employees) are required to achieve 50 μg/m³ by means of engineering and work practice controls. Small non-ferrous foundries (fewer than 20 employees), however, are only required to achieve 75 μg/m³ by such controls. All foundries are required to comply within five years.

* * * * *

[FR Doc. 90-1746 Filed 1-29-90; 8:45 am]

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federal register

Tuesday
January 30, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 579

Supplemental Assistance for Facilities To Assist the Homeless; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-2095; FR-2728-N-01]

Supplemental Assistance for Facilities To Assist the Homeless; Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice announces the availability of $10,830,000 in funds, appropriated by the HUD appropriations act for fiscal year 1990 (Pub. L. 101-144, approved November 9, 1989), for applications for assistance under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program.

DATE: Applications for SAFAH assistance must be received by 3:00 p.m. Eastern Standard Time on April 2, 1990 at the following address: Department of Housing and Urban Development, Office of Community Planning and Development, Special Needs Assistance Programs, Room 7262, 451 Seventh Street SW., Washington, DC 20410. Application packages are available from the HUD Field Office for the area in which the applicant's project is located. A list of Field Offices and contract persons appears at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300 or, for hearing and speech-impaired persons, (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and were assigned OMB control number 2506-0111, expiration date December 31, 1992.

The SAFAH program was authorized by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100-628, enacted Nov. 7, 1988). HUD published a final rule (24 CFR Part 579) governing all aspects of the program on November 7, 1989 (54 FR 46812).

This Notice announces the availability of $10,830,000 in SAFAH funds for interest-free advances and grants for: (1) Comprehensive assistance for particularly innovative programs for, or alternative methods of, meeting the immediate and long-term needs of the homeless; or (2) assistance to cover the costs in excess of assistance provided under the Emergency Shelter Grants (ESG) or the Supportive Housing Demonstration (SHD) programs required to: (i) Meet the special needs of homeless families with children, elderly homeless individuals, or handicapped homeless persons; (ii) facilitate the transfer and use of public buildings to assist the homeless; or (iii) provide supportive services for the homeless. Eligible applicants are States, metropolitan cities, urban counties, governmental entities, tribes, and private nonprofit organizations. The maximun amount that an applicant may receive is $1 million.

Comprehensive assistance is available generally to assist in the acquisition, lease, conversion, or rehabilitation of facilities for the homeless, and to help defray costs of providing supportive services and operating facilities for the homeless. Assistance in excess of ESG or SHD funding is available for any activity that is eligible under the ESG and SHD programs.

Applications for the category of comprehensive assistance will be funded first. To the extent funds are available after all eligible applications for comprehensive assistance have been funded, applications for assistance in excess of ESG and SHD funding will be considered. Assistance in excess of ESG and SHD funding will be available only for projects that have received funding, or have been approved for funding, under those programs.

In accordance with section 432(d) of the McKinney Act, HUD will reserve, to the extent practicable, not less than 50 percent of all available funds for the support of facilities and services designed primarily to benefit homeless elderly individuals or homeless families with children, with a portion of those funds to be used for child care facilities and services to serve the children of homeless families. This provision of section 432(d) was implemented through the ranking criteria, which provide points for such facilities or services.

Section 432(d) also requaires that HUD, to the extent practicable, distribute all available funds equitably across geographic areas. Considering the limited amount of funds available for this national competition ($10.8 million) and the average grant size of $340,000 that resulted from the previous SAFAH competition in 1987, HUD has determined that it is not practicable to distribute available funds on the basis of geography without significantly compromising the overall quality of the projects selected. It should be noted that in the 1987 competition for $15 million, over $14 million was awarded without regard to geography. The projects receiving those funds were located in 20 different states and in all major regions of the country.

To be considered for SAFAH assistance, an applicant must meet the application requirements at § 579.210 of the November 7, 1989 final rule. (A copy of the final rule is included in the application package.) The applicant is required to submit information on the proposed project and the homeless population that the project will serve, evidence of the applicant's capacity and experience in establishing and operating homeless facilities, and evidence of the applicant's past efforts and continuing commitment to serve lower income persons, as well as other information and assurances described in the application package.

Applications will be scored and ranked, with a maximum of 1,000 points, based upon five criteria. The Department considers each of these criteria to be important and expects successful applicants to achieve points for each one. The five criteria, which are described in detail in § 579.215 of the SAFAH final rule, follow:

1. *Innovation* (200 points)—HUD will award up to 200 points based on the extent to which the applicant's proposal involves a particularly innovative program for, or alternative methods of, meeting the immediate and long-term needs of the homeless.

2. *Comprehensiveness* (400 points)—HUD will award up to 400 points based on the comprehensiveness of the proposal in serving the identified homeless population.

3. *Leveraging* (200 points)—HUD will award up to 200 points based on the extent to which the applicant will leverage the amount of SAFAH assistance requested with funds and other resources from other public or private sources.

4. *Special homeless populations* (100 points)—HUD will award up to 100 points based on the extent to which the application proposes facilities and services designed primarily to benefit homeless elderly individuals or homeless families with children, or proposes child care facilites and

services to be used for children of homeless families.

5. *Cost effectiveness* (100 points)—HUD will award up to 100 points based on the extent to which the applicant's proposed costs are reasonable in relation to the work to be done and the goods and services to be purchased, and are effective in accomplishing the purposes of the proposal. HUD believes that cost-effective approaches are important, but recognizes that this quality can be difficult to measure. The allocation of only 100 points out of 1,000 for cost effectiveness reflects this difficulty, not a lack of emphasis on the importance of this criterion.

HUD expects to announce awards of SAFAH funds by May 30, 1990. Applicants will be notified whether the application will be funded or rejected. In the event of a tie between applicants, HUD will use the quality of the proposal and the need for the project in the area to determine which application should be selected for funding. In the event of a procedural error that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant during that competitive year, HUD may fund that applicant in the next funding round.

Application packages may be obtained by writing the Department of Housing and Urban Development Field Office at the following addresses:

Alabama	Jasper Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Birmingham, AL 35209-3144; (205) 731-1672.
Alaska	William D. Melton, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513-7537; (907) 271-3669.
Arizona	Diane Domzalski, One North First St., 3rd Floor, P.O. Box 13468, Phoenix AZ 85004-2361; (602) 379-4754.
Arkansas	Billy M. Parsley, Lafayette Bldg., 523 Louisiana, Ste. 200, Little Rock, AR 72201-3707; (501) 378-6375.
California:	
Southern	Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015-3801; (213) 251-7235.
Northern	Gordon H. McKay, 450 Goldengate Ave., P.O. Box 36003, San Francisco, CA 94102-3448; (415) 556-4457.
Colorado	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Connecticut	Daniel Kolesar, 330 Main St., Hartford, CT 06106-1860; (203) 240-4508.
Delaware	John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665.
District of Columbia	James H. McDaniel, 451 7th St. SW, Rm. 3158, Washington, DC 20410-5500; (202) 453-4520.
Florida	Cleveland Talmadge, 325 W. Adams St., Jacksonville, FL 32202-4303; (904) 791-3587.
Georgia	Charles N. Straub, Russell Fed. Bldg., 75 Spring St. SW, Atlanta, GA 30303-3388; (404) 331-5139.
Hawaii	Calvin Lew, 300 Ala Moana Blvd., Rm. 3318, Honolulu, HI 96850-4991; (808) 541-1327.
Idaho	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Illinois	Richard Wilson, 547 W. Jackson Blvd., Chicago, IL 60606-5601; (312) 353-1696.
Indiana	Robert F. Poffenberger, 151 N. Deleware St., Indianapolis, IN 46204-2526; (317) 226-5169.
Iowa	Joe E. Jones, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3839.
Kansas	Miguel Madrigal, Professional Bldg., 1103 Grand Ave., Kansas City, MO 64106-2496; (816) 374-6496.
Kentucky	Andrew Robertson, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201-1044; (502) 582-5251.
Louisiana	Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70172-0288; (504) 589-7212.
Maine	David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640.
Maryland	Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202-1865; (301) 962-2417.
Massachusetts	Frank Del Vecchio, Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5345.
Michigan	Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226-2592; (313) 226-4343.
Minnesota	Shawn Huckleby, 221 2nd St. South, Minneapolis, MN 55401-2195; (612) 370-3019.
Mississippi	Jeanie E. Smith, Fed. Bldg., 100 Capitol St., Room 910, Jackson, MS 39269-1096; (601) 965-4765.
Missouri:	
Eastern	David H. Long, 210 N. Tucker Blvd., St. Louis, MO 63101-1997; (314) 425-4322.
Western	Miguel Madrigal, Professional Bldg., 1103 Grand Ave., Kansas City, MO 64106-2496; (816) 374-6496.
Montana	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Nebraska	Joe E. Jones, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3839.
Nevada	Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015-3801; (213) 251-7235.
New Hampshire	David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640.
New Jersey	Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102-5504; (201) 877-1776.
New Mexico	Victor J. Hancock, 1600 Throckmorton, P.O. Box 290, Fort Worth, TX; 76113-2905; (817) 855-5483.
New York:	
Upstate	Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768.
Downstate	Joan Dabelko, 26 Federal Plaza, New York, NY 10278-0068; (212) 264-2685.
North Carolina	Charles T. Ferebee, 415 N. Edgeworth St., Greensboro, NC 27401-2107; (919) 333-5711.
North Dakota	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Ohio	John E. Riordan, 200 North High St., Columbus, OH 43215-2499; (614) 469-6743.
Oklahoma	Katie Worsham, Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102-3202; (405) 231-4973.
Oregon	John G. Bonham, 520 SW 6th Ave., Portland, OR 97204-1596 (503) 326-7018.
Pennsylvania:	
Western	James A. Getsy, 412 Old Post Office Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493.
Eastern	John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665.
Puerto Rico	Rafael Isern, 159 Carlos Chardon Ave., San Juan, PR 00918-1804; (809) 766-5935.
Rhode Island	Frank Del Vecchio, Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5345.
South Carolina	Thomas F. O'Brien, Fed. Bldg., 1835-45 Assembly St., Columbia, SC 29201-2480; (803) 765-5564.
South Dakota	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Tennessee	Virginia Peck, 710 Locust St., Knoxville, TN 37902-2526; (615) 549-9422.
Texas:	
Northern	Victor J. Hancock, 1600 Throckmorton, P.O. Box 290, Fort Worth, TX; 76113-2905; (817) 855-5483.
Southern	Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX; (512) 229-6819.
Utah	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.
Vermont	David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2487; (603) 666-7640.
Virginia	John Levay, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240-9998; (804) 771-2624.
Washington	John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101-2054; (206) 442-0374.
West Virginia	James A. Getsy, 412 Old Post Office Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493.

Wisconsin	Lana J. Vacha, Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203-2289; (414) 297-3113.
Wyoming	Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811.

Other Matters

During the development of the final rule for the SAFAH program, the General Counsel, as the designated official under Executive Order 12606, The Family, and Executive Order 12612, Federalism, made determinations on the impact of the rule on the family and on implications of federalism contained in the rule. Those determinations, published November 7, 1989 (54 FR 46812), have not been altered by any announcements contained in this Notice.

Dated: January 23, 1990.

Anna Kondratas,

Assistant Secretary, for Community Planning and Development.

[FR Doc. 90-1995 Filed 1-29-90; 8:45 am]

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federal register

Tuesday
January 30, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9, 22, 23, 36, and 52
Federal Acquisition Regulation (FAR); Safety and Occupational Health Provisions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 22, 23, 36, and 52

RIN 9000-AC75

Federal Acquisition Regulation (FAR); Safety and Occupational Health Provisions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 9.104–1(e), 22.102–1, 22.102–2, 23.301, 23.302, 23.303, 36.513, and the clauses at 52.223–3, 52.236–7, and 52.236–13, and adding subpart 23.6, and a clause at 52.223–7 concerning radioactive material. The major changes (a) add "safety programs" to section 9.104–1 as an example of an element which may be applicable to responsibility determinations; (b) clarify the role of the Occupational Safety and Health Administration (OSHA) in relation to the administration and enforcement of OSHA regulations at 22.102–2; (c) revise the requirements for submission of the Material Safety Data Sheets required by 29 CFR 1910.1200; (d) add coverage and contractural provisions on radioactive materials notification; and (e) clarify the accident prevention responsibilities of contractors.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 2, 1990 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 88–64 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

29 CFR 1910.1200, Hazard Communication, requires that employees in the manufacturing sector be advised of the hazards of chemicals with which they work. In order to achieve this purpose, the Hazard Communication Standard requires that employers obtain a Material Safety Data Sheet (MSDS) for all hazardous chemicals they use (the Federal agencies are already required to do this). Chemical manufacturers and distributors in the private sector are required to provide MSDS with the hazardous chemicals they ship to other distributors and pruchasers. In a July 25, 1985 decision, the Department of Labor's Deputy Associate Solicitor for Occupational Safety and Health determined that "application of the standard to Federal agency heads may not, however, be construed as requiring private employers to take any action with respect to Federal agencies, including supplying material safety sheets to the agencies." Therefore, while chemical manufacturers and distributors must develop or otherwise obtain MSDS's for their hazardous material products to satisfy the requirements of the standard in the private sector, they are not required to provide them to Federal agencies to enable the Federal agencies to satisfy their obligations under the standard. Consequently, Federal agencies can only comply with the requirements of the Hazard Communication Standard through obtaining the MSDS's as part of the contracts used to purchase the goods to which the MSDS's apply.

B. Regulatory Flexibility Act

The proposed rule does not appear to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it requires them merely to furnish before award and with their product, a document which they are already required by 29 CFR 1910.1200 to generate. Therefore, the time and financial resources necessary to comply with the proposed requirement will have already been invested prior to any involvement in contracting with the Government. It is likely that most small entities affected by the proposed changes will be distributors rather than manufacturers. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR sections will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 610 (FAR Case 88–64) in the correspondence.

C. Paperwork Reduction Act

With the exception of the clause at 52.223–7, Notice of Radioactive Materials, the Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not contain any recordkeeping or information collection requirements of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq. The Material Safety Data Sheets being required of offerors and contractors in the proposed FAR changes must already be generated by them to comply with 29 CFR 1910.1200, Hazard Communication, when selling their products within the private sector. Therefore, the time and financial resources necessary to comply with the proposed requirement will have already been invested prior to any involvement in contracting with the Government.

The clause at 52.223–7, Notice of Radioactive Materials, requires contractors to give written notice prior to delivery of, or prior to completion of any servicing of items of radioactive materials. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the contractor which will put users of the items on notice as to the hazards involved. Because of this burden requirement, a request for approval of an information collection pertaining to Radioactive Material (OMB Control 9000–0XXX) has been submitted to OMB. A notice of this was published in the **Federal Register** on January 17, 1990.

List of Subjects in 48 CFR Parts 9, 22, 23, 36, and 52

Government procurement.

Dated: January 19, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 9, 22, 23, 36, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 9, 22, 23, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.104–1 is amended by revising paragraph (e) to read as follows:

9.104-1 General standards.

* * * * *

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors) (see 9.104-3(b));

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

3. Section 22.102-1 is amended by revising the introductory text to read as follows:

22.102-1 Policy.

Agencies shall cooperate and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

* * * * *

4. Section 22.102-2 is amended by redesignating the existing paragraphs (a) and (b) as (b) and (c) and by adding a new paragraph (a) to read as follows:

22.102-2 Administration.

(a) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. Contractors or contractor employees who inquire concerning applicability or interpretation of Occupational Safety and Health Administration regulations shall be advised that rulings concerning such matters fall within the jurisdiction of the U.S. Department of Labor, and shall be given the address of the appropriate field office of the Occupational Safety and Health Administration of the U.S. Department of Labor.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

5. Section 23.301 is revised to read as follows:

23.301 Definition.

"Hazardous material" is defined in the latest version of Federal Standard No. 313. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FFN), Room 6622, 7th & D Streets SW., Washington, DC 20407.)

6. Section 23.302 is amended by revising the section title and paragraphs (b) and (c), and by adding paragraphs (d) and (e) to read as follows:

23.302 Policy.

* * * * *

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS's)) are required on the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313.

(3) Any other material designated by the technical representative of the contracting activity as potentially hazardous and requiring safety controls. Technical personnel are required to identify items that in their professional opinion will involve exposure of Government personnel to hazardous materials in any manner (e.g., performance of work, use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use) after delivery to the Government-designated destination.

(d) The clause at 52.223-3, Hazardous Material Identification and Material Safety Data, requires submission of MSDS's—

(1) By the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous; and

(2) For agencies other than the Department of Defense, by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of MSDS's received from apparently successful offerors to the cognizant safety officer and/or other designated official, in order to facilitate—

(1) Inclusion of relevant data in an agency MSDS information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

7. Section 23.303 is revised to read as follows:

23.303 Contract clause.

The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts when one or more of the circumstances listed in 23.302(c) exist.

8. Subpart 23.6, consisting of sections 23.601 and 23.602, is added to read as follows:

Subpart 23.6—Notice of Radioactive Material

Sec.
23.601 Requirements.
23.602 Contract clause.

Subpart 23.6—Notice of Radioactive Material

23.601 Requirements.

(a) The contract clause at 52.223-7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The contract clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the contract clause at 52.223-7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for ensuring the proper license, authorization, or permit is obtained prior to receipt of the radioactive material.

23.602 Contract clause.

The contracting officer shall insert the clause at 52.223-7, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain—(a) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring

specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel guages, compasses, and identification markers.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

9. Section 36.513 is amended by redesignating the existing text as paragraph (a), and by adding paragraphs (b) and (c) to read as follows:

36.513 Accident prevention.

(a) The contracting officer shall insert the clause at 52.236–13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract, or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated, and the contract amount is expected to be within the small purchase limitation. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Section 52.223–3 is revised to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

Hazardous Material Identification and Material Safety Data (Jan. 1990)

(a) "Hazardous material," as used in this clause, includes the following:

(1) All items in, or ordinarily cataloged under, the Federal Supply Classes listed in Table I of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(2) Items having hazardous characteristics in the Federal Supply Classes listed in Table II of Appendix A of the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(3) Any other items to be delivered under this contract which will contain hazardous material or expose Government personnel to those materials.

(b) Each Offeror shall certify as follows:

The Offeror certifies that the material to be delivered /—/ is, /—/ is not a hazardous material as defined in paragraph (a) of this clause.

(c) The apparently successful Offeror agrees to submit, prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 for all hazardous material described in paragraph (a) of this clause unless the certification in paragraph (b) of this clause applies. Data shall be submitted on all items included in the offer, whether or not the apparently successful Offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award shall result in the apparently successful Offeror being considered nonresponsible and ineligible for award.

(d) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (c) of this clause or the certification submitted under paragraph (b) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(e) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(f) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(g) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate, and disclose any data to which this clause is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials; (ii) obtain medical treatment for those affected by the material; and (iii) have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (g)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) That the Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate I (JAN 1990). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (h) to the basic clause:

(h) The Contractor shall submit with the supplies at the time of delivery a Material Safety Data Sheet meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313 for all hazardous material described in paragraph (a) of this clause, unless the certification in paragraph (b) of this clause applies. Data shall be submitted on all items meeting the description of hazardous material in paragraph (a) of this clause, whether or not the Contractor is the actual manufacturer of these items.

11. Section 52.223–7 is added to read as follows:

52.223–7 Notice of radioactive materials.

As prescribed in 23.602, insert the following clause:

Notice of Radioactive Materials (Jan. 1990)

(a) The Contractor shall notify the Contracting Officer or designee, in writing . . . [*the Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See 23.600(d).*] days prior to the delivery of, or prior to completion of, any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in title 10 CFR, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000–0XXX).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall (1) be submitted in writing, (2) contain a certification that the quantity of the activity, characteristics, and composition of the radioactive material has not changed, and (3) cite the contract number on which the prior

notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL–STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

12. Section 52.236–7 is revised to read as follows:

52.236–7 Permits and responsibilities.

As prescribed in 36.507, insert the following clause:

Permits and Responsibilities (Jan. 1990)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all material delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

13. Section 52.236–13 is revised to read as follows:

52.236–13 Accident prevention.

As prescribed in 36.513, insert the following clause:

Accident Prevention (Jan. 1990)

(a) The Contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment, exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and control costs in the performance of this contract.

(b) For these purposes, on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition, or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385–1–1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (JAN 1990). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that, on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards.

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

[FR Doc. 90–1902 Filed 1–29–90; 8:45 am]

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federal register

Tuesday
January 30, 1990

Part V

Department of Justice

Office of Justice Programs

Program Guidelines for the Victims Compensation Program Under the Victims of Crime Act; Notice

DEPARTMENT OF JUSTICE

Office of Justice Programs

Program Guidelines for the Victims Compensation Program Under the Victims of Crime Act

AGENCY: Office for Victims of Crime, Justice.

ACTION: Notice of Final Program Guidelines for the Victims Compensation Program under the Victims of Crime Act.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), United States Department of Justice (DOJ), is publishing final Program Guidelines to implement the victims compensation program authorized by the Victims of Crime Act of 1984 (VOCA), Public Law 98–473, as amended by the Children's Justice and Assistance Act of 1986, Public Law 99–401 and as amended by the Anti-Drug Abuse Act of 1988, title VII, subtitle D of Public Law 100–690 (hereinafter referred to as the Act). The Victims of Crime Act has been codified at 42 U.S.C. 10601, *et seq.* The Program is a priority of President George Bush and Attorney General Dick Thornburgh and contributes to national crime and drug control efforts by compensating and assisting eligible victims.

The Act provides Federal financial assistance to states for the purpose of compensating and otherwise assisting victims of crime, and also provides funds for training and technical assistance and assisting victims of Federal crimes. These Program Guidelines provide program background, eligibility requirements, and administrative procedures for the implementation of the crime victims compensation program as authorized in section 1403 of the Act. The Guidelines are based on the experience gained during the first 4 years of the program's implementation and are responsive to the 1988 amendments to the Victims of Crime Act. These Guidelines supersede all previous Program Guidelines issued by the Victims of Crime Act victim compensation program.

FOR FURTHER INFORMATION CONTACT: Jay Olson, (202) 724–5947. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The Victims of Crime Act establishes a Crime Victims Fund in the Treasury that receives moneys annually from four sources: Criminal fines collected from convicted Federal defendants; new penalty assessments imposed on convicted Federal defendants; forfeited appearance bonds, bail bonds, and collateral security posted by Federal criminal defendants; and literary profits due certain convicted Federal defendants.

The 1988 amendments authorize deposits in the Fund through September 30, 1994, and amended section 1402. In section 1402, the ceiling of the Fund was raised and the allocation modified. The maximum amount which could be deposited in the Fund was raised to $125 million for the Fiscal Years 1989–1991, and to $150 million for Fiscal Years 1992–1994. Any excess of these amounts does not become part of the Fund. The first $2.2 million of excess funds will be made available to the Administrative Office of the U.S. Courts for administrative costs to carry out functions related to the collection of fines; the remaining excess will be deposited in the general fund of the U.S. Treasury.

Monies deposited in the Fund shall be made available in the following manner:

- Of the first $100 million deposited in the fund:

—49.5% shall be made available for compensation programs;
—45% shall be made available for assistance programs;
—1% shall be made available for training and technical assistance and for services to Federal victims, and
—4.5% shall be made available for Child Abuse Prevention and Treatment Grants (Children's Justice and Assistance Act).

Of the 4.5% made available for Child Abuse Prevention and Treatment Grants, 15% shall be made available for assisting Native American Indian tribes in developing, establishing, and operating programs designed to improve the handling, investigation and prosecution of child abuse cases, especially child sexual abuse cases.

- Sums up to $5,500,000 above the first $100 million deposited in the Fund shall be made available for Child Abuse Prevention and Treatment Grants.
- Deposits in excess of $105,500,000 *but* not in excess of $110,000,000 shall be made available for victim assistance programming.
- Of deposits in excess of $110,000,000:

—47.5% shall be made available for compensation programs;
—47.5% shall be made available for assistance programs;
—5% shall be made available for services to victims of Federal crime by eligible crime victim assistance programs.

In addition to the changes in section 1402, the Crime Victims Fund, there were significant amendments to section 1403, Crime Victims Compensation:

- Annual grant awards to eligible state crime victim compensation programs will equal 40 percent of the amounts awarded by the state to crime victims from state sources of revenue during the preceding fiscal year or a reduced percentage should the sums available in the Fund be insufficient to provide this amount. The change represents a net increase of 5 percent from the previous figure of 35 percent.
- In order for a state to meet or maintain eligibility for a crime victims compensation grant, the state must by October 1, 1990, satisfy the new eligibility requirements of Section 1403(b):

—State programs must now offer compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence (section 1403(b)(1)). The amendments further provide that "such program does not, except pursuant to rules established by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender. (section 1403(b)(7)).
—State programs must provide compensation to residents of the State who are victims of crimes occurring outside the State if the crimes would be compensable crimes had they occurred inside the State and the places the crimes occurred in are States not having eligible crime victim compensation programs. (section 1403(b)(6)).
—Medical expenses, for which crime victims compensation may be awarded, is expanded to include *eyeglasses and other corrective lenses.* (section 1403(d)(2)).

These Guidelines are intended to implement the crime victim compensation grant provisions of the Act. Final Program Guidelines for the victim assistance provisions were issued separately on May 18, 1989 **Federal Register**, Vol. 54, No. 95 (54 FR 21493).

These Guidelines do not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

In addition, because these Guidelines will not have significant economic

impact on a substantial number of small entities, no analysis of the impact of these rules on such entities is required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The collection of information described in Section VI of the guidelines has been approved by the Office of Management and Budget (OMB) as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121–0014.)

Summary of the Comments to the Proposed Program Guidelines

In the administration of the crime victims compensation program the Office for Victims of Crime has attempted to adhere closely to the letter and spirit of the Victims of Crime Act. The primary purpose of the VOCA victim compensation program is to assist states in meeting the special needs of victims of crime by supplementing state sources of revenue, for crime victims compensation, through grant awards to eligible state crime victims compensation programs.

The 1988 amendments to the Victims of Crime Act made a number of changes in the crime victims compensation program. These amendments can be found in section 1403(b) which describes the requirements a state compensation program must meet in order to qualify for a state grant award.

An eligible state compensation program must now offer compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence. The explicit inclusion of drunk driving and domestic violence marked a strong interest in promoting substantial change in the policies and practices of state compensation programs. In a related provision, a state program may not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender. Additionally, an eligible state program must now provide compensation to residents of the state who are victims of crimes occurring outside the state if the crimes would be compensable crimes inside the state and if the crimes occurred in states that do not have eligible crime victims compensation programs.

On May 18, 1989, the Office for Victims of Crime published for comment, proposed Program Guidelines for the crime victims compensation, program authorized in section 1403 of the Victims of Crime Act. (Federal Register Vol. 54, No. 95, Pages 21493–21499.) The public comment period extended from May 18, 1989, to July 3, 1989.

The proposed Guidelines provided a complete discussion of program requirements, eligibility requirements including the new requirements mandated in the 1988 amendments to VOCA, and policy issues for the crime victims compensation grant program which provides annual grant awards to eligible state crime victims compensation programs.

A total of 21 written responses to the Proposed Guidelines were received and reviewed by the Office for Victims of Crime. Responses were received from national organizations, state and local coalitions, advisory groups and a VOCA state administrator.

The comments received from all respondents could be said to be very supportive of the proposed Guidelines drafted by the Office for Victims of Crime to implement the amendments to the crime victims compensation program. It could also be said that there was a clear consensus that the amendments to section 1403 will advance the rights of victims of violent crimes and that the implementing proposed Guidelines reflected the spirit of the amendments. Many of the comments were enthusiastic in their endorsement of the proposed Guidelines. A few respondents had specific suggestions which would expand upon the language in one section or another. These are presented and discussed in the analysis that follows.

Analysis of and Response to Comments on the Proposed Program Guidelines

There was considerable consistency among the 21 respondents who submitted comments to the proposed Program Guidelines. All were felt to be supportive of the Guidelines and many expressed their enthusiasm in general or for the explicit inclusion of domestic violence and/or drunk driving in crime victims compensation programs. Respondents included individuals as well as representatives of state and national organizations concerned with various aspects of crime victims compensation. The national organizations included Mothers Against Drunk Driving (MADD), National Coalition Against Domestic Violence, National Association of Crime Victims Compensation Boards, and the National Council of Juvenile and Family Court Judges. Additionally, there were comments from state and local chapters of national organizations, a state victim witness coordinating council and a VOCA state administrator.

One national organization, with over 400 chapters and over one million members and supporters, expressed "full support of the Proposed Program Guidelines for Crime Victims Compensation Grants." Additionally, the organization stated that "we are especially supportive of the language which deletes exceptions such as payment of some but not all compensable expenses and requiring conviction prior to awarding a compensation grant."

Local chapters of another national organization stated that they were pleased that the Guidelines clarified and expanded the scope of the crime compensation program.

Another national organization congratulated the Office for Victims of Crime "for the sensitivity it has shown to the often overwhelming obstacles battered women face when applying for victim compensation. The draft regulations are a step in the right direction toward making victim compensation available on a more equitable basis to victims of domestic violence."

A local coalition commented that it was "pleased that the guidelines reflect such a clear understanding of the dynamics of domestic violence. They represent a serious and sensitive attempt to provide domestic violence victims greater access to compensation programs."

A national association provided the following comment, "We believe that the guidelines strengthen and enhance the unique working relationship between the states and the federal government that has been fostered both by the Victims of Crime Act and the efforts of your office to implement it."

A state VOCA administrator had the following comment about the proposed guidelines, "They are well developed, well written and will provide us, the state administrators with the proper direction to implement VOCA at the state level."

A judge who is Chairman of the Family Violence Committee of the National Association of Juvenile and Family Court Judges had the following remarks, "We strongly agree with the requirement that state programs offer compensation to victims of domestic violence and the compensation not be denied based solely on the type of crime, category of benefits, relationship to the offender or living arrangements."

A state victim and witness coordinating council expressed support of the 1988 amendments and the proposed Guidelines. The council gave specific support to the inclusion of

victims and survivors of victims of domestic violence, prohibitions against the categorical exclusions of such victims, and the non-discriminatory application of any rule relating to unjust enrichment of the offender.

One respondent, representing a county chapter of a national organization, stated that "we are especially glad to see the proposal stating that a conviction shall not be required in drunk driving cases as long as the officer's report indicated the offender was driving while intoxicated."

One national organization indicated that they were "very supportive of the new condition for eligibility that requires state victim compensation programs to describe to the Office for Victims of Crime (OVC) their efforts to inform Native Americans about the existence and availability of victim compensation."

In addition to the general support of the Guidelines, some specific suggestions were made. Two national programs recommended that the deadline for meeting the new state grant eligibility requirements, included in the 1988 amendments, be extended from October 1, 1990, to October 1, 1991. A number of states will not have legislative sessions in 1990 and, therefore, cannot make necessary legislative changes to maintain eligibility for crime victims compensation state grants under VOCA. An amendment to section 7129 (Transition Rule) of the Act would be necessary to change the date by which states are required to meet the new provisions.

One respondent recommended that the requirement of state compensation programs to issue "rules" to prevent unjust enrichment of the offender be clarified to include a written policy statement which sets out the criteria for determining unjust enrichment in all claims for crime victims compensation. This recommendation was accepted and these Final Guidelines reflect the change.

One respondent expressed concern about the need to include child victims as eligible claimants for crime victims compensation. Since the enactment of VOCA, child victims have always been included in both the crime victims compensation and assistance programs. Child victims are specifically given priority status in the victims assistance grant program. Statistics reveal that increasing numbers of child victims have been the recipients of compensation grant monies each year since the program began. However, the commentator raises an important issue regarding the special considerations which must be given to child victims of criminal violence particularly when the violence is perpetrated by a family member. Children, because of their age and status, generally are not in a position to make decisions regarding treatment needs, place of residence, or with whom they will reside. In consideration of crime victims compensation on behalf of children, it is important that they not be penalized for situations or conditions beyond their control.

One national organzation made four specific comments in addition to their overall support of the Guidelines:

1. It was suggested that the Office for Victims of Crime require that state grantees frunish specific information about the number of applications from domestic violence victims received by State crime victims compensation programs. This is very well taken. The Office for Victims of Crime recognizes the need for such information in monitoring implementation of the amendments to section 1403. The annual Performance Report form has already been revised by OVC to include this type of information and has been distributed to all state grantees.

2. There was concern expressed that the discussion of domestic violence in the proposed Guidelines was too narrow in scope, making reference only to the familial relationships between the victim and the offender. Section 1403(b)(7) clearly states that eligible programs cannot exclude victim applicants solely because of the familial relationships between the offender and victim or a situation in which the offender and victim share a residence. Therefore, the discussion of the domestic violence requirements has been amended to include victims who may share a residence with the offender.

3. In the proposed Guidelines the discussion of awards for victims of domestic violence includes the statement that the same eligibility requirements which apply to other victims of violence also apply to domestic violence victims such as timely reporting and *cooperation with law enforcement.* The respondent correctly points out that the Victims of Crime Act specifically states that victims must cooperate with the *reasonable request of law enforcement authorities.* The Final Guidelines now reflect the same language as that which appears in the Act.

4. It was also suggested that crime victims compensation programs actively provide information to domestic violence victims through domestic violence shelters and other service programs so that domestic violence victims are made aware of the fact that new efforts are being made to include them in crime victims compensation programs. The Domestic Violence section of these Final Guidelines supports the recommendation by making it clear that the Office of Victims of Crime expects crime victims compensation programs and domestic violence coalitions to work together to meet the specific needs of domestic violence victims.

Guidelines for Crime Victim Compensation Grants

I. Overview of the Statute

Section 1403(a)(1) of the Act provides that, funds permitting, the Director will make an annual grant to an eligible crime victim compensation program in an amount equal to 40% of the amount paid from State funds by the program as compensation to victims of crime (excluding amounts paid to compensate victims for property damage) during the preceding fiscal year. If the amount in the Fund is insufficient to award each state 40% of its prior year compensation payouts, section 1403(a)(2) provides that all States will be awarded the same reduced percentage of their prior year payouts from the available funds. For purposes of the victim compensation provisions of the Act, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States. (Section 1403(d)(4)).

Section 1403 of the Act prescribes the conditions and eligibility criteria related to crime victim compensation grants.

II. Program Requirements for Grants

In order to be eligible for awards under Section 1403 of the Act, a State must submit the following information and assurances:

(1) A statement certified by the chief executive of the State, State Attorney General, or the Secretary of State, of the total amount of payments made to victims during the preceding fiscal year from State sources.

(2) The amount of such compensation paid for "property damage";

(3) The total amount and each source of revenue for the program;

(4) A certified copy of the State statute or other legal authority establishing the program.

For the purpose of requirement (1), the amount to be certified is only the amount actually spent by the program to compensate victims of crime. Amounts expended for administration of the program or other types of victim assistance are to be excluded, as are

amounts appropriated or collected for the purpose of victim compensation which were not expended.

For the purpose of requirement (2), the term "property damage" is defined by the Act to exclude damage to eyeglasses, corrective lenses, dental devices, and prosthetic devices. Therefore, a State may include payments made for damage to those devices in the amount reported under requirement (1) as compensation to victims of crime. Compensation paid to reimburse crime victims for damages to, or loss of, any other real or personal property must be reported under requirement (2).

For the purpose of requirement (4), certification may be effected by the chief executive, the State Attorney General, or the clerk of the State legislature.

The requested information and assurances must be provided annually when the applicant State agency furnishes the Office of Victims of Crime with the total amount of payments to victims of criminal violence for the year requested.

III. State Grant Eligibility Requirements

State crime victims compensation programs which apply for a grant under the provisions of the Victims of Crime Act, as amended, must provide assurances of compliance with the requirements of section 1403(b) of the Act and these Guidelines. The definitions of terms used in section 1403(b) appear in section 1403(d). The 1988 amendments to the Act are italicized.

(1) the term "property damage" does not include damage to prosthetic devices, *eyeglasses or other corrective lenses,* or dental devices;

(2) the term "medical expenses" includes, to the extent provided under the eligible crime victim compensation program, expenses for *eyeglasses and other corrective lenses, for* dental services and devices and prosthetic devices, and for services rendered in accordance with a method of healing recognized by the law of the State;

(3) the term "compensable crime" means a crime the victims of which are eligible for compensation under the eligible crime victim compensation program, *and includes driving while intoxicated and domestic violence;* and

(4) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

A State crime victim compensation program is eligible for a grant upon providing to the Office for Victims of Crime the necessary assurances, supported by written documentation of compliance with the eight eligibility requirements in section 1403(b). The requirements are provided below with a discussion of each. New requirements, added by the 1988 amendments, are italicized and must be met by October 1, 1990.

Eligibility Requirements

Section 1403(b) (1) through (8) of the Victims of Crime Act (42 U.S.C. 10602(b)) lists the eight eligibility requirements which must be met by a state crime victims compensation program in order to be considered for a grant award. Those requirements are listed below followed by a discussion of each. The 1988 Amendments to the Act are italicized.

A crime victims compensation program is an eligible crime victims compensation program if:

(1) Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence, [for—]

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a death resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime;

(2) Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

(3) Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

(4) Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are non-residents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

(5) Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

(6) Such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) The crimes would be compensable crimes had they occurred inside that State; and

(B) The places the crimes occurred in are States not having eligible crime victim compensation programs;

(7) Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; and

(8) Such program provides such other information and assurances related to the purposes of this section as the *Director* may reasonably require.

Discussion of the eight eligibility requirements is presented here:

1. Such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for:

(A) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care;

(B) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(C) Funeral expenses attributable to a death resulting from a compensable crime.

Discussion: The fundamental criterion of eligibility is an operational State-administered crime victim compensation program. Although an authorized program that has not actually paid out compensation benefits would be technically eligible under subsection 1403(b)(1), the program would not be entitled to any Federal funds because it had not awarded any benefits that the Federal government could match under subsection 1403(a)(1). Federal funds may not be used as "start-up" funds for a new State program.

The Act requires as a condition of eligibility that a crime victim compensation program offer compensation for crime-related medical expenses (including mental health counseling and care), lost wages, and funeral expenses. This criterion does not require the payment of all these expenses without limitation: Rather, it requires that the State offer compensation in each area, subject to such limitations and conditions as the State deems appropriate.

"Mental health counseling and care" means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is required to alleviate psychological trauma resulting from a compensable crime. Such intervention must be provided by a person who meets such standards as may be set by the State for victim mental health counseling and care.

The 1988 amendments require, as a new condition of eligibility, effective October 1, 1990, that a State must specifically include two categories of crime victims to those eligible for crime victims compensation. These two

categories are victims of drunk driving and domestic violence. Exclusion of victims in these two categories as eligible recipients of crime victims compensation would make a state ineligible to apply for a VOCA crime victim compensation grant. Victims of drunk driving and domestic violence must be considered for crime victims compensation on the same basis or criteria as other victims of criminal violence. Domestic violence victims include victims of spouse abuse, child abuse and elder abuse.

Some States include the two categories of victims identified above as eligible applicants for compensation but within one or both of the categories the State statute provides specific exceptions, conditions, or limitations which serve to eliminate some victims of drunk driving and domestic violence from compensation awards. Some of the exceptions are indicated below:

- Payments of some but not all compensable expenses available to other victims;
- Denial of compensation to relatives of the perpetrator, *e.g.* victims of child abuse denied compensation because the perpetrator was the parent who may or may not have lived in the same residence;
- Denial of compensation to victims living with the perpetrator;
- Requiring, in all drunk driving cases, that a conviction of the offender precede the awarding of compensation.

This short list is not exhaustive. It only serves to identify *some* of the exceptions. These exceptions, or any other specific exceptions, which have the effect of establishing a categorical exclusion for the two types of victims specifically mentioned in the amendments (domestic violence and drunk driving) will not be allowable effective October 1, 1990.

This does not mean that State discretion in determining whether to make an award, has been eliminated. It only means that a denial of compensation to any victim of drunk driving or domestic violence cannot be made solely on the basis of the type of crime, the category of benefits requested, the living arrangement of the offender and victim, or the fact that victim and perpetrator are related.

Domestic Violence

In considering awards of compensation to victims of domestic violence, States should apply the same standards that are applied to claims from victims of other violent crimes, regardless of the familial relationship of the offender and the victim or because the victim and offender share a residence. This means that the same level of benefits for compensable expenses available to other victims must be available to domestic violence victims, and that the same eligibility requirements, such as timely reporting and victim cooperation with the reasonable requests of law enforcement authorities, shall apply.

Subsection 1403(b)(7), another new provision of the Act effective October 1, 1990, prohibits State programs from denying compensation because of the living arrangements of victim and perpetrator: "Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim's familial relationship to the offender, or because of the sharing of a residency by the victim and the offender. . . ." This means that unjust enrichment, as the basis for denying crime victims compensation, must be based upon written rules issued by the State crime victims compensation program. "Rules" is interpreted to mean either written policies or directives developed and distributed by state crime victim compensation programs, or rules adopted by legislative or administrative bodies.

Such rules cannot have the effect of denying most domestic violence victims of compensation. The rules relating to unjust enrichment should be applicable to all claims for compensation although it is recognized that domestic violence cases may have the greatest potential for unjust enrichment.

In general, programs must balance the goals of making compensation benefits available to domestic violence victims and preventing unjust enrichment of offenders. State programs are strongly encouraged to work with domestic violence coalitions and representatives to this end. As new policies are developed, states are encouraged to provide this information to domestic violence victims through those individuals and organizations who come into contact with domestic violence victims (*e.g.* shelters, counseling programs, law enforcement authorities and medical personnel.)

In developing rules, the States should consider:

A. The legal responsibilities of the offender to the victim under the laws of the state, and collateral resources of funds available to the victim from the offender. For example, legal responsibilities may include court-ordered restitution or requirements for spouse and/or family support under the domestic or marital property laws of the State. Collateral resources may include insurance or pension benefits available to the offender to cover the costs incurred by the victim as a result of the crime. As with other crimes, victims of domestic violence should not be penalized when collateral sources of payment are not viable, *e.g.*, when the offender refuses to or cannot pay restitution or other civil judgments within a reasonable period of time or when the offender otherwise impedes direct or third party (*i.e.*, insurance) reimbursements.

B. The extent to which the payment will substitute for money that the offender otherwise normally would expend for the benefit of the household or its members. Payments to victims of domestic violence which benefit offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. To deny payments, in some instances, could serve to further victimize the claimant.

C. Consultation with social services and other concerned governmental entities, as well as with private organizations that support and advocate on behalf of domestic violence victims.

D. The special needs of child victims of criminal violence especially when the perpetrator was the parent who may or may not have lived in the same residence.

Drunk Driving

Victims of drunk driving is the second category of victims specifically named in the 1988 amendment to section 1403(b)(1). Effective October 1, 1990, State programs will be required to offer compensation to victims and survivors of victims of "drunk driving."

Section 1403(d)(3) defines the term "compensable crime" to include victims of those "driving while intoxicated." In these Guidelines, the Office for Victims of Crime does not make a distinction between the terms "drunk driving" and "driving while intoxicated." The use of both terms in the amendments to section 1403 of the Victims of Crime Act, signals an interest in the inclusion of victims of both drunk driving and driving under the influence of other intoxicants. States use these two terms, and others, in their statutes to denote offenses associated with the operation of a motor vehicle while chemically impaired. In addition, the specific classification of offenses is contingent upon the results of appropriate tests to determine intoxication or the influence of drugs or alcohol.

In FY 1991, States will be required to offer crime victims compensation to victims and survivors of victims of vehicular crashes attributable to drunk

or intoxicated driving. Consistent with the practice of awarding compensation to all other victims of criminal violence on the basis of a law enforcement officer's investigation report establishing the commission of a crime, victims of drunk driving crashes should be considered for compensation on the same basis. It is acknowledged that occasionally a police report may not be sufficient to establish that a crime took place. With drunk driving cases, as with other cases, individual decisions will have to be made on the basis of available documentation.

2. Such program promotes victim cooperation with the reasonable requests of law enforcement authorities;

Discussion: This criterion requires that a State program promote victim cooperation with the reasonable requests of law enforcement authorities. The States may impose such reasonable requirements as they see fit, but must, at a minimum, require a victim to report the crime to the appropriate criminal justice agency and assist in the identification of the suspect.

3. Such State certifies that grants received under this section will not be used to supplant State funds otherwise available to provide crime victim compensation;

Discussion: The Act prohibits States from using the Federal funds made available under the Act to supplant State funds otherwise available for crime victim compensation. Section 1403(b)(3).

The nonsupplantation provision is fundamentally intended to assure that the States use the Federal funds provided under the Act to augment, not replace, otherwise available State funding for victim compensation. Federal funds should be used to enhance compensation benefits or expand program coverage, not simply a substitute for previously available State monies. The State may not decrease their financial commitment to crime victim compensation solely because they are receiving Federal funds for the same purposes.

4. Such program, as to compensable crimes occurring within the State, makes compensation awards to victims who are nonresidents of the State on the basis of the same criteria used to make awards to victims who are residents of such State;

Discussion: This provision is intended to assure that nonresidents of a State who are victimized in a State that has an eligible compensation program are provided the opportunity to apply for and receive the same compensation benefits that are available to residents of the State. The provision of reciprocal agreements with certain other States, or foreign compensation programs will not suffice to meet this criterion. Eligibility for Federal funding will require the program to extend its coverage to all nonresidents victimized in the State.

5. Such program provides compensation to victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes;

Discussion: This does not constitute a new eligibility requirement, rather it is a rewording of the requirement in a more concise manner. States must compensate victims of Federal crimes occurring within the State on the same basis that such program provides compensation to victims of State crimes. For example, a victim of a rape occurring on a Federal installation or Indian reservation inside the State must be afforded the same benefits that would be available to the victim if the rape were committed elsewhere in the State.

6. Such program provides compensation to residents of the State who are victims of crimes occurring outside the State if—

(A) The crimes would be compensable crimes had they occurred inside that State; and

(B) The places the crimes occurred in are States not having eligible crime victim compensation programs;

Discussion: This requirement protects residents of a State, with an eligible crime victims compensation program, who are victims of criminal violence in another State which does not have an eligible crime victims program. In such instances, the victim would be eligible for crime victims compensation from the State in which he/she resides, effective October 1, 1990. If a person from one State is victimized in another which has an eligible compensation program, the State in which the crime was committed would offer compensation to the victim as provided in "Item 4" above.

7. Such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because that victim's familial relationship to the offender, or because of the sharing of a residence by the victim and the offender;

Discussion: Effective October 1, 1990, program requirements governing unjust enrichment as the basis for denying crime victims compensation by a State must be based upon written policies or directives developed and distributed by State crime victims compensation programs, or rules adopted by legislative or administrative bodies. Such rules, policies, or directives cannot have the effect of denying most domestic violence victims of compensation. A full discussion of this requirement was included in the discussion of requirement "Item 1" above.

8. Such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

Discussion: States receiving crime victims compensation grants are required to prepare annual performance reports on the form provided by the Office for Victims of Crime. The reports furnish specific information about claims for compensation including types of crimes committed, including drunk driving and domestic violence, disposition of claims and payments for compensable expenses. The performance report covers the Federal fiscal year ending September 30, and is due in the Office for Victims of Crime by December 30 of the same year. Data furnished by the States provides necessary information for the preparation of the Report to the President and the Congress due December 31, 1990, and on December 31 every two years thereafter.

Information about State crime victims compensation programs and the eligibility of victims of Federal crimes for State compensation awards is not readily available on Indian reservations in many States. Because of this situation, the Office for Victims of Crime, as part of its responsibility for implementing the new requirements of the Act, has included a new condition of eligibility for a crime victims compensation grant. States are now required to initiate efforts to inform those on Indian reservations about the State crime victims compensation program and the availability of compensation to all victims of violent crimes including those victimized on Indian reservations or Federal installations. States will be asked to describe these efforts in their applications for fiscal year 1990 funding.

IV. Financial Requirements

A. Payment of Grant Funds

1. *Annual Requirement Under $120,000.* Grantees whose annual fund requirement is less than $120,000 will receive Federal funds on a "Check Issued" basis. Upon receipt, review and approval of a Request for Advance or Reimbursement, H–3 Report 1121–0013 (OJP, Form 7160/3) by the grantor agency, a voucher and a schedule for payment is prepared for the amount approved. This schedule is forwarded to the U.S. Treasury requesting issuance

and mailing of a check directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly.

2. *Annual Requirement Over $120,000.* Grantees whose annual fund requirement exceeds $120,000 generally receive Federal funds by utilizing the "Letter of Credit" procedures. This funding method is a cash management process prescribed by the U.S. Treasury for all major grant-in-aid recipients.

3. *Check Issuance.* All checks drawn for the payment of fund requests, either under the "Check Issued" or the "Letter of Credit" process, are prepared and disbursed by the U.S. Treasury and *not* by the grantor agency.

4. *Termination of Advance Funding.* If a grantee organization receiving cash advances by letter of credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, the grantor agency may terminate advance funding and require the grantee organization to finance its operations with its own working capital. Payments to grantee will then be made by the direct Treasury check method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimal amount of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

B. Cost Allowability

Allowable costs for crime victims compensation are:

(1) Medical expenses attributable to a physical injury resulting from compensable crime, including expenses for mental health counseling and care:

(2) Loss of wages attributable to a physical injury resulting from a compensable crime; and

(3) Funeral expenses attributable to a death resulting from a compensable crime.

Amounts expended for administration of the program (including the performance of audits) are not allowable costs.

States are encouraged, but not required, to provide emergency awards for allowable costs when immediate services or assistance are necessary for the victim's health or welfare. A number of States currently provide for emergency awards.

Audit costs: Although under OMB Circular A–128 audit costs are generally allowable charges under Federal grants, audit costs incurred at the grantee (State) level are determined to be an administrative expense and, therefore, *cannot* be paid for with crime victim compensation grant funds.

c. *Audit Responsibilities.* Pursuant to the Office of Management and Budget (OMB) Circular A–128, "Audits of State and Local Governments," grantees, subgrantees, and subrecipients have the responsibility to provide for an audit of their activities. These audits shall be made annually, unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. Note: Institutions of higher education, hospitals, and other nonprofit organizations have the responsibility to provide for an audit of their activities not less than every 2 years. While governments (state and local) receiving less than $25,000 in any fiscal year are exempt from a single audit, there is no audit exclusion for private nonprofit organizations. However, where state and local governments and nonprofit organizations received grants or other agreements less than $100,000 and do not obtain audits that meet the requirements of OMB Circulars A–110 and A–128, DOJ grantor organziations shall ensure that Federal funds are spend in accordance with applicable laws and regulations. Techniques to use to determine recipient compliance with Federal requirements include:

1. Recipient obtained audits made in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General;

2. Previous audits performed on recipients' operations;

3. Desk reviews by program officials of project documentation;

4. Project audits by Federal auditors or auditors obtained by recipients; and

5. Evaluations of recipients' operations by program officials.

These audits shall be made by an independent auditor in accordance with generally accepted government auditing standards governing financial and compliance audits. The required audits are to be performed on an organization-wide basis as opposed to a grant-by-grant basis. The audit reports must include:

1. The auditor's report on financial statement of the receipt organization and a schedule of financial assistance showing the total expenditure for each Federal assistance program;

2. The auditor's report on compliance containing:

(a) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(b) A negative assurance of those items not tested and a summary of all instances of noncompliance; and

(c) The auditor's report on the study and evaluation of internal control systems, which must identify the organization's significant internal accounting controls designed to provide reasonable assurance that Federal programs are being managed in compliance with applicable laws and regulation. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of that evaluation.

D. *Audit Objectives.* Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the recipient's administration of grant funds and required non-Federal contributions for the purpose of determining whether the recipient has:

1. Financial statements of the government, department, agency, or establishment that present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

2. The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulation; and

3. The organization has complied with laws and regulations that may have material effect on its financial statements and on each Federal assistance program.

E. *Audit Implementation.* Grantees are required to specify their arrangement for complying with the provisions of OMB Circular A–128 and include in their grant application, to the extent possible, the following information:

1. The identity of the organization that will conduct the audit;

2. Approximate timing of when the audit will be performed;

3. Audit coverage to be provided. Where the audit will not provide the coverage requirements as specified previously, the audit policy or procedures must describe the specific arrangements for obtaining audit services that will meet the requirements;

4. An identification of the audit standards, if any, with which the grantee will not comply;

5. Receipt and appropriate distribution of the resultant audit report; and

6. Audit resolution policies and procedures to be followed in resolving the audit report.

F. *Fund Suspension or Termination.* If, after notice and opportunity for a hearing, the Office for Victims of Crime, Office of Justice Programs finds that a State has failed to substantially comply with the Victims of Crime Act, the *Financial and Administrative Guide for Grants,* OJP M 7100.1 (effective edition), these final implementing Guidelines, or any implementing regulation, the Director of the Office for Victims of Crime, may suspend or terminate funding to the State, or take other appropriate action, as deemed necessary.

G. *Grant Application.* The Office for Victims of Crime prepares and distributes an annual Program Instruction for crime victims compensation grants.

The Program Instruction, which is sent to all State compensation programs eligible to apply for a grant, provides the necessary information and guidance for the preparation and submission of an application for a grant award. Enclosed with the Program Instruction is an application kit containing the necessary application materials and instructions for the submission of the required assurances.

V. Additional Requirements

A. Civil Rights

1. *General.* The Act provides that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity receiving funds under the Act on the basis of race, color, religion, national origin, handicap, or sex. (Section 1407(e) of the Act.) Recipients of funds under the Act are also subject to title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination in Federally-funded programs on the basis of race, color, or national origin), section 504 of the Rehabilitation Act of 1973, 2 U.S.C. 794 (prohibiting discrimination in such programs on the basis of handicap), the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.*, and the Department of Justice Nondiscrimination Regulations, 28 CFR part 42, subparts C, D, and G.

2. *Required Assurances and Information.* To be eligible for funding under the Act, a crime victim compensation program must submit the following assurances and information:

a. An assurance that the program will comply with all applicable nondiscrimination requirements;

b. An assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, national origin, sex, age or handicap against the program, the program will forward a copy of the finding to the Office of Justice Programs, Office for Civil Rights (OCR);

c. The name of the civil rights contact person who has lead responsibility in ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR;

d. An assurance that programs will maintain information on victim services provided by race, national origin, sex, age and handicap. Note: States are not required to submit this information as part of their program performance report.

B. *Confidentiality of Research Information.* No recipient of monies under the Victims of Crime Act of 1984, as amended, shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this program and the Act. Such information shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. (See section 1407(d) of the Act.) This provision is intended, among other things, to assure the confidentiality of information provided by crime victims to those working in State crime victims compensation programs. Whatever the scope of application given this provision, it is clear that there is nothing in the Act or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information which is supportive of the Act's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981).

C. *Drug-Free Workplace.* On November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). This statute requires that grantees of Federal agencies certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a grant from a Federal agency. State crime victims compensation programs that apply for a crime victims compensation grant, as authorized in section 1403(a)(1) of the Victims of Crime Act must provide the necessary certification. The instrument for the certification is OJP Form 4061/3 and is titled "Certification Regarding Drug-Free Workplace Requirements." The form is furnished as a part of the grant application packet mailed annually to States eligible to apply for a grant award. The grantee's authorized representative is required to sign and date the certification and include it with the State's application for a crime victims compensation grant award.

VI. Reporting Requirements

A crime victim compensation program receiving funds under the Act will be required to submit an annual performance report. These reports will be on a form prepared and distributed by the Office for Victims of Crime. Reports will be due no later than December 30 for the Federal fiscal year ending September 30.

Approved:

Jane Nady Burnley,

Director, Office for Victims of Crime.

T. March Bell,

General Counsel, Office of Justice Programs.

[FR Doc. 90–2085 Filed 1–29–90; 8:45 am]

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federal register

Tuesday
January 30, 1990

Part VI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 3 and 52
Federal Acquisition Regulation (FAR); Anti-Lobbying; Interim Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[Federal Acquisition Circular 84-55]

Federal Acquisition Regulation (FAR); Anti-Lobbying

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-55 amends the Federal Acquisition Regulation (FAR) to implement section 319 of the Department of Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 319 generally prohibits recipients of Federal contracts, grants, loans, and cooperative agreements from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, loan, or cooperative agreement. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

The Act also required the Director of the Office of Management and Budget (OMB) to issue guidance for agency implementation of, and compliance with the Act. OMB interim final guidance appeared in the **Federal Register** on December 20, 1989. The Act is effective as of December 23, 1989. This FAC 84-55 interim rule is based upon such OMB guidance.

DATES: *Effective:* January 30, 1990.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 2, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 84-55 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-55.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed change to the FAR may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The impact is likely to occur because, in connection with contract awards in excess of $100,000, offerors will be required to gather and provide to the Government certain information with respect to the use of nonappropriated funds with respect to the procurement. Therefore, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be sent to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-93) in correspondence.

B. Paperwork Reduction Act

The requirements of the Act were addressed by the Office of Management and Budget (OMB) in the development of its interim final guidance, published in the **Federal Register** on December 20, 1989 (54 FR 52306), implementing section 319 of the Department of Interior and Related Agencies Appropriations Act, Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." A Paperwork Reduction Act emergency approval was granted by OMB under control number 0348-0046 for the information collection requirements.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: January 26, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in this interim rule FAC 84-55 is effective January 30, 1990.

Dated: January 22, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Ida M. Ustad,

Acting Associate Administrator for Acquisition Policy, GSA.

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-55 amends the Federal Acquisition Regulation (FAR) as specified below:

Item—Anti-Lobbying

FAR subpart 3.8, the provision at 52.203-11, and the clause at 52.203-12 are added to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101-21, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act). The Act prohibits recipients of Federal contracts, grants, loans, and cooperative agreeements from using appropriated funds for lobbying the executive or legislative branches of the Government in connection with a specific contract, grant, loan, or cooperative agreement. The Act also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds. This FAC 84-55 reflects the interim final guidance issued by the Office of Management and Budget (OMB) and published in the **Federal Register** on December 20, 1989 (54 FR 52306).

Therefore, 48 CFR parts 3 and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Subpart 3.8, consisting of sections 3.800 through 3.808, is added to read as follows:

Subpart 3.8—Limitation on the Payment of Funds to Influence Federal Transactions

Sec.

Subpart 3.8—Limitations on the Payment of Funds to Influence Federal Transactions

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to title 31, United States Code, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions" (the Act).

3.801 Definitions.

"*Agency,*" as used in this section, means an executive agency as defined in 2.101.

"*Covered Federal action,*" as used in this section, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"*Indian tribe*" and "*tribal organization,*" as used in this section, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"*Influencing or attempting to influence,*" as used in this section, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"*Local government,*" as used in this section, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"*Officer or employee of an agency,*" as used in this section, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code;

(c) A special Government employee, as defined in section 202, title 18, United States Code; and

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"*Person,*" as used in this section, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Reasonable compensation,*" as used in this section, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"*Reasonable payment,*" as used in this section, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"*Recipient,*" as used in this section, includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Regularly employed,*" as used in this section, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"*State,*" as used in this section, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

§ 3.802 Prohibitions.

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(c) The prohibitions of the Act do not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for

agency and legislative liaison activities not directly related to a covered Federal action.

(ii) For purposes of subdivision (c)(1)(i) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(iii) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(A) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(B) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(iv) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(A) Providing any information not specifically requested bo covered Federal action;

(B) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(C) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507, and subsequent amendments.

(v) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) *Professional and technical services.* (i) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of—

(A) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;

(B) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(ii) For purposes of subdivision (c)(2)(i) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents

(iv) Only those services expressly authorized by subdivisions (c)(2)(i) (A) and (B) of this section are permitted under this section.

(v) The reporting requirements of 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

3.803 Certification and disclosure

(a) Any contractor who requests or receives a Federal contract exceeding $100,000 shall submit the certification and disclosures required by the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, with its offer. Disclosures under this section shall be submitted to the contracting officer using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (a) of this section. An event that materially affects the accuracy of the information reported includes—

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(c) The contractor shall require the submittal of a certification, *and* if required, a disclosure form, by any person who requests or receives any subcontract exceeding $100,000 under the Federal contract.

(d) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the contracting officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

3.804 Policy

(a) The contracting officer shall obtain certifications and disclosures as required by the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding $100,000.

(b) The contracting officer shall forward a copy of all contractor disclosures furnished pursuant to the clause at 52.203–12, Limitation on

Payments to Influence Certain Federal Transactions, to the official designated in accordance with agency procedures, for subsequent submission to Congress. The original of the disclosure shall be retained in the contract file.

3.805 Exemption

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this section whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary shall transmit a copy of such exemption to Congress immediately after making such a determination.

3.806 Processing suspected violations

Suspected violations of the requirements of the Act shall be referred to the official designated in agency procedures.

3.807 Civil penalties

Agencies shall impose and collect civil penalties pursuant to the provisions of the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804–3408, and 3812, insofar as the provisions therein are not inconsistent with the requirements of this subpart.

3.808 Solicitation provision and contract clause

(a) The provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations expected to exceed $100,000.

(b) The clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts expected to exceed $100,000.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.203–11 is added to read as follows:

52.203–11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions

As prescribed in 3.808, insert the following provision:

Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (Jan 1990)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

(End of provision)

4. Section 52.203–12 is added to read as follows:

52.203–12 Limitation on Payments to Influence Certain Federal Transactions

As prescribed in 3.808, insert the following clause:

Limitation on Payments to Influence Certain Federal Transactions—(Jan 1990)

(a) *Definitions.*

"*Agency*," as used in this clause, means executive agency as defined in 2.101.

"*Covered Federal action*," as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"*Indian tribe*" and "*tribal organization*," as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"*Influencing or attempting to influence*," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"*Local government*," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"*Officer or employee of an agency*," as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"*Person*," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Reasonable compensation*," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"*Reasonable payment*," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"*Recipient*," as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"*Regularly employed*," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately

preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"*State*," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.* (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(*1*) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(*2*) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(*1*) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(*2*) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(*3*) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95–507, and subsequent amendments.

(E) Only those services expressly authorized by subdivison (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.* (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(*1*) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(*2*) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her clients's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A) (*1*) and (*2*) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) *Disclosure.* (A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(*1*) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(*2*) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(*3*) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding $100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(v) *Penalties.* (A) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

[FR Doc. 90–2206 Filed 1–29–90; 10:00 am]
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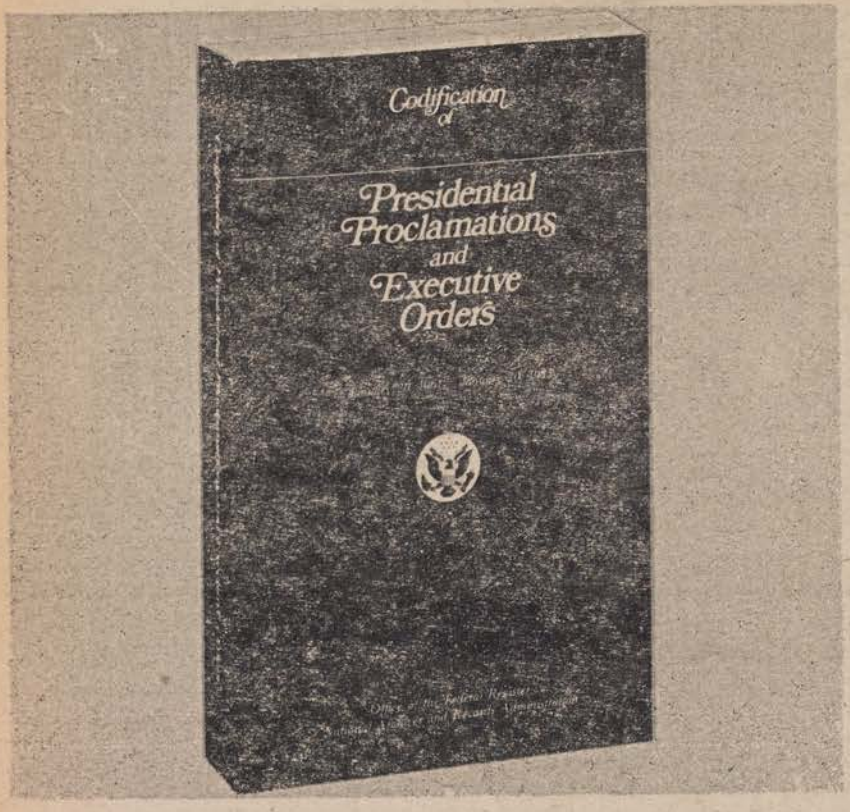

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