2-12-90
Vol. 55 No. 29

federal register

Monday
February 12, 1990

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

2-12-90
Vol. 55 No. 29
Pages 4829-4980

federal register

Monday
February 12, 1990

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.

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

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

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 55 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

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

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: 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.

Contents

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
6091 4978

9 CFR
Proposed Rules:
92 4849

14 CFR
39 (4 documents) 4829, 4832
97 4834
Proposed Rules:
Ch. I 4849
39 4850

20 CFR
404 4936
416 4936

23 CFR
640 4835

24 CFR
291 4836

26 CFR
Proposed Rules:
1 4853
602 4853

29 CFR
Proposed Rules:
1910 4938
1926 4938
2700 4853

30 CFR
Proposed Rules:
917 (2 documents) 4866, 4868

33 CFR
Proposed Rules:
117 (2 documents) 4869, 4936

35 CFR
119 4837

38 CFR
Proposed Rules:
36 4869

40 CFR
Proposed Rules:
152 (2 documents) 4956
153 (2 documents) 4956
155 (2 documents) 4956
156 (2 documents) 4956
157 (2 documents) 4956
162 (2 documents) 4956
163 (2 documents) 4956
164 (2 documents) 4956
165 (2 documents) 4956
166 (2 documents) 4956
167 (2 documents) 4956
168 (2 documents) 4956
169 (2 documents) 4956
170 (2 documents) 4956
171 (2 documents) 4956
172 (2 documents) 4956
173 (2 documents) 4956
180 (2 documents) 4956
372 4879

43 CFR
Public Land Orders:
6765 4838

47 CFR
73 (2 documents) 4838, 4839
Proposed Rules:
1 4882
2 4883
22 (2 documents) 4882, 4884
73 (5 documents) 4884, 4886
80 4886
90 (2 documents) 4883, 4888
94 4888

48 CFR
3 4936

50 CFR
672 4839
675 4839

Rules and Regulations

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-72-AD; Amdt. 39-6509]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which currently requires inspection and/or replacement of certain check valves in the 8th stage bleed pneumatic system. This amendment is prompted by reports that operators are continuing to find cracks in check valves even though the valves have been modified in accordance with the existing AD. This amendment requires repetitive inspections on all Hamilton Standard check valves in the 8th stage bleed pneumatic system, and replacement, if necessary. This condition, if not corrected, could result in failure of the 8th stage bleed pneumatic system check valve, causing engine surge and compressor stall, leading to engine shutdown, and/or engine or bleed system damage.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, or Hamilton Standard, Division of United Technologies Corp., Bradley Field Road, Windsor Locks, Connecticut 06096. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1955. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87-12-07, Amendment 39-5646 (52 FR 23641; June 24, 1987), applicable to certain Boeing Model 767 airplanes, to require repetitive inspections on all Hamilton Standard check valves in the 8th stage bleed pneumatic system, and replacement, if necessary, was published in the **Federal Register** on June 21, 1989 (54 FR 26050).

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

Five commenters, including two foreign air carriers, responded. None expressed objection to the technical intent of the proposed rule; however, all but one expressed concern over the proposed compliance periods and suggested the following changes:

a. The initial inspection period should be extended from the proposed 500 hours to 800 or 1,000 hours time-in-service.

b. The repetitive inspection period should be extended from the proposed 1,200 hours to 1,600 or 2,000 hours time-in-service.

As justification for such extension to the proposed compliance times, the commenters stated that the required inspections should be accomplished during a main base visit ("C" check) where adequate shop and parts support can be ensured. The commenters also stated that field service experience and failure rates of this component vis-a-vis crack growth indicate that the inspection intervals can be extended without increasing the risk of valve operation failure.

The FAA does not concur with the request to extend the compliance times. The FAA considers that the commenter's Item a. suggested change is adequately covered under the rule, which provides an initial compliance time of 500 hours time-in-service after the effective date of the AD or 1,200 hours accumulated time-in-service on the valve, whichever occurs later, and therefore exceeds the 800 to 1,000 hours time-in-service recommendation suggested by the commenters. No change is therefore necessary.

The FAA does not concur with commenters' Item b. suggested change. The field service data submitted by one of the commenters (Japan Airlines) shows that poppet rim cracks (no separations) have occurred at as little as 543 hours time-in-service and at an average rate of 1,104 hours time-in-service. The field service data from another commenter shows that rim cracks of 0.2" to 1.4" have occurred at as little as 224 hours time-in-service and at an average rate of 2,612 hours time-in-service. This same data cited a case where, on one airplane, no crack was found at 1,552 hours, but a 1" crack was found after the next 1,564 hour period. Since the poppet crack growth rate and location criticality are not well established, the FAA has determined that the 1,200-hour repetitive inspection interval, based on all previous field service data available at this time, is justified to detect such cracks and replace the valve, if necessary.

One commenter rquested that terminating action be provided for certain items which were listed in the preamble to the NPRM as conditions/failure modes for the part number 773856 check valves that need to be inspected on a repetitive basis in accordance with Hamilton Standard Service Bulletin 36-2078, dated March 1, 1989. These items requiring inspection include the welded-on identification plate, poppet rim clearance, poppet/shaft side play, poppet/shaft retention if product improvement L3 has not been incorporated, and the swaged collar condition if product improvement L4 has not been incorporated, The FAA concurs. Since issuance of the NPRM, the FAA has reviewed and approved Hamilton Standard Service Bulletin 36-2078, Revision 1, dated August 15, 1989, which clarifies and reduces the recommended inspections and/or eliminates the need for repetitive inspections of certain check valves. The final rule has been revised to cite this revised service bulletin as an appropriate alternate information source; by doing so, terminating action is provided for the inspections associated with the subject items.

This commenter also stated that testing has verified that the poppet cracking is the result of high flow resonant frequencies, and requested that the final rule include incorporation of a stiffening ring at the large end of the poppet as corrective action for the cracking poppet installation. The FAA concurs. Since issuance of the NPRM, the FAA has reviewed and approved Hamilton Standard Service Bulletin 36–2082, dated August 1, 1989, which describes procedures for modifying certain check valves to install this stiffening ring. Accordingly, the final rule has been revised to cite this latest revision of the service bulletin as an appropriate information source and to provide terminating action for the check valve poppet inspections and replacement requirements.

This commenter further stated that an alternate terminating action for this AD should be the incorporation of an I.P. check valve, P/N 773856–14, which incorporates a new redesigned poppet. There are no inspection requirements for this new check valve. The FAA concurs and the final rule has been revised accordingly.

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

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

The regulations 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 amendment 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 prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.31 [Amended]

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

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

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

A. Within the next 500 hours time-in-service after the effective date of this AD, or prior to the accumulation of 1,200 hours time-in-service on the valve, whichever occurs later, perform the inspections of the 8th stage bleed pneumatic system check valve specified in Hamilton Standard Service Bulletin 36–2078 dated March 1, 1989, or Revision 1, dated August 15, 1989. Prior to further flight, repair or replace any check valves which do not pass all the required inspections. Thereafter, inspect the check valve poppet at intervals not to exceed 1,200 hours time-in-service, in accordance with Hamilton Standard Service Bulletin 36–2078 dated March 1, 1989, or Revision 1, dated August 15, 1989.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Hamilton Standard Service Bulletin 36–2078, dated March 1, 1989, or Revision 1, dated August 15, 1989, prior to installation in any Model 767 series airplane.

C. Installation of a valve which has been modified in accordance with Hamilton Standard Service Bulletin 36–2082, dated August 1, 1989, constitutes terminating action for the check valve poppet inspections and replacement required by this AD.

D. Valves identified as Part Number 773856–14 are not subject to the initial inspection or the repetitive inspection required by paragraphs A. and B., above. Installation of Part Number 773856–14 valve, therefore, constitutes terminating action for the inspection requirements of this AD.

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

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

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

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

This amendment supersedes Amendment 39–5646, AD 87–12–07.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–3204 Filed 2–9–90; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 89–NM–216–AD; Amdt. 39–6511]

Airworthiness Directives; British Aerospace Model BAe 146–200A and 300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–200A and –300A series airplanes, which requires modification of the fuselage rear section. This proposal is prompted by reports of a riveting deficiency during modification of Stringer 21P in the area where it is attached to the lower left-hand skin panel. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain British Aerospace Model BAe 146–200A and –300A series airplanes, which requires modification of the fuselage rear section, was published in the **Federal Register** on November 30, 1989 (54 FR 49304).

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

The commenter supported the rule.

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

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $300.

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:

British Aerospace: Applies to Model BAe 146–200A and –300A series airplanes, as listed in British Aerospace Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989, certificated in any category. Compliance is required prior to the accumulation of 3,000 landings since new, or within 30 days after the effective date of this AD, whichever occurs later, unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Modify the fuselage rear section by adding eight rivets to the Stringer 21P end termination area, in accordance with British Aerospace Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989.

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

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

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

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

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–3207 Filed 2–9–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–01–AD; Amdt. 39–6508]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, which requires a revision to the Airplane Flight Manual to provide further warning against the use of reverse thrust and propeller pitch settings below the flight regime while in flight. This amendment is prompted by reports of in-flight movement of the propeller speed and pitch control system into reverse thrust or propeller pitch settings intended for ground operation. This condition, if not corrected, could result in loss of control of the airplanes.

EFFECTIVE DATE: February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Woodford Boyce, Standardization Branch, ANM–113; telephone (206) 431–1587. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Recently, a CASA Model C-212 series airplane was involved in an accident. Preliminary findings by the FAA indicate the possibility of in-flight placement of the propeller speed and pitch control system into reverse thrust or propeller pitch settings intended only for ground operation. Information obtained from a previous accident investigation indicates that this situation may have been a factor in another accident as well. This condition, if not corrected, could result in loss of control of the airplane.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) to prohibit inflight movement of the propeller speed and pitch control system into reverse thrust or propeller pitch settings intended only for ground operation. This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking to address it.

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 further determined that this action involves an emergency regulation under DOT Regulatory Policies and 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:

Casa: Applies to all Model C-212 series airplanes, certificated in any category. Compliance is required within 15 days after the effective date of this AD, unless previously accomplished.

To minimize the possibility of in-flight movement of the propeller speed and pitch control system into reverse thrust or propeller pitch settings intended only for ground operation, accomplish the following:

A. Incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM.

"Do not retard the power lever of an operating engine aft of FLIGHT IDLE while airborne. *WARNING:* An immediate out-of-control situation may develop from which recovery cannot be accomplished."

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

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

This amendment becomes effective February 26, 1990.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-3205 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-NM-199-AD; Amdt. 39-6510]

Airworthiness Directives; McDonnell Douglas Models DC-9, C-9 (Military), and DC-9-80 (MD-80) Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes, which currently requires a check of the aft accessory compartment for fuel, installation of placards, and a revision to the Airplane Flight Manual (AFM). This amendment requires inspection, modification, and repair of the auxiliary power unit (APU) exhaust system, trimming of the APU forward lower frame, and modification of the aft pressure bulkhead insulation blanket. This amendment is prompted by the discovery of a new fuel leak path, and the development of a new modification which improves the aft accessory compartment drainage and minimizes the possibility of fuel being absorbed by the aft pressure bulkhead insulation blanket. Fuel leaking into the aft accessory compartment, if not corrected, could result in a fire hazard.

EFFECTIVE DATE: March 19, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Group Leader, DC-9/MD-80 Technical Publications, C1-HCP (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. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM-140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Aircraft

Certification Service, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5245.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 88-24-04, Amendment 39-6066 (53 FR 46441; November 17, 1988), applicable to McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes, to require inspection, modification, and repair of the auxiliary power unit (APU) exhaust system, trimming of the APU forward lower frame, and modification of the aft pressure bulkhead insulation blanket, was published in the **Federal Register** on October 20, 1989 (54 FR 43081).

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

The commenter disagreed with the proposal that the modification described in McDonnell Douglas DC-9 Service Bulletin (S/B) 53-229 be required as part of the AD terminating action because this service bulletin does not eliminate the fuel leak source. The FAA does not concur. Since there is no fire detection or extinguishing provision in the aft accessory compartment, fuel must not be allowed to accumulate in the aft accessory compartment or be absorbed by the aft pressure bulkhead insulation blanket. The referenced modification will prevent these occurrences.

Further, the commenter stated that replacarding to restrict the use of the APU until such time that the procedures of S/B 53-229 are accomplished would unnecessarily penalize the operators who have already accomplished the procedures of S/B A49-40, Revision 1. The FAA concurs that it is not necessary to require placarding until the accomplishment of S/B 53-229. Therefore, the final rule has been revised to specify that the placard and AFM revision (required by paragraph A.) may be removed once the procedures of S/B A49-40, Revision 1, are accomplished (as required by paragraph B.).

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

There are approximately 1,525 McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 936 airplanes of U.S. registry will be affected by this AD, that it will take approximately 90 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,369,600.

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 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 amending Amendment 39-6066 (53 FR 46441; November 17, 1988), AD 88-24-04, as follows:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9, C-9 (Military), and DC-9-80 (MD-80) series airplanes, and Model MD-88 airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire in the aft accessory compartment, accomplish the following:

A. Within 30 days or 300 flight hours time-in-service after December 2, 1988, (the effective date of AD 88-24-04, Amendment 39-6066), whichever occurs first, or upon the accumulation of 3,000 flight hours time-in-service since new, whichever occurs later, accomplish the following:

1. Check for evidence of fuel on the APU exhaust ducting and in the surrounding area in the aft accessory compartment, including the insulation blankets. Remove any fuel before the next APU start attempt.

2. Install a placard on or above the center instrument panel in a location that allows it to be in full view of both pilot and co-pilot, and on the aircraft logbook, stating the following: "DO NOT ATTEMPT TO RESTART APU AFTER A FALSE START UNTIL CHECK OF AFT ACCESSORY COMPARTMENT FOR FUEL IS ACCOMPLISHED."

3. Add the following to 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: "DO NOT ATTEMPT TO RESTART APU AFTER A FALSE START UNTIL CHECK OF AFT ACCESSORY COMPARTMENT FOR FUEL IS ACCOMPLISHED."

B. Within 36 months from the effective date of this amendment, inspect, modify, and repair the APU exhaust duct assembly in accordance with procedures described in Figures 3, 4, and 5 of McDonnell Douglas DC-9 Sevice Bulletin A49-40, Revision 1, dated May 16, 1989. Once the actions required by this paragraph are accomplished, the placard and AFM change required by paragraph A., above, may be removed.

C. Within 36 months from the effective date of this amendment, trim the ends of the APU forward lower frame and modify the aft pressure bulkhead insulation blanket, in accordance with procedures described in McDonnell Douglas DC-9 Service Bulletin 53-229, dated July 6, 1989.

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, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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 information from the manufacturer may obtain copies upon

request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Group Leader, DC-9/MD-80, Technical Publications, C1-HCP (54-60). 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.

This amendment amends Amendment 39-6066, AD 88-24-04.

This amendment becomes effective March 19, 1990.

Issued in Seattle, Washington, on January 31, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-3206 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 97

[Docket No. 26126; Amdt. No. 1419]

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 location, 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 of 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 February 2, 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 as follows:

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 May 3, 1990

Red Bluff, CA—Red Bluff Muni, VOR/DME RWY 15, Amdt. 3
Red Bluff, CA—Red Bluff Muni, VOR RWY 33, Amdt. 4
Santa Barbara, CA—Santa Barbara Muni, VOR RWY 25, Amdt. 5
Santa Barbara, CA—Santa Barbara Muni, ILS RWY 7, Amdt. 2
HILO, HI—HILO INTL, VOR RWY 26, Amdt. 7, CANCELLED
HILO, HI—HILO INTL, VOR—B, Orig.
HILO, HI—HILO INTL, VOR/DME OR TACAN RWY 26, Amdt. 5
HILO, HI—HILO INTL, VOR/DME OR TACAN-A, Amdt. 7
HILO, HI—HILO INTL, ILS RWY 26, Amdt. 12
Albemarle, NC—Stanly County, NDB RWY 22, Orig.
Allentown, PA—Allentown-Bethlehem Easton, VOR OR TACAN-A, Amdt. 8

. . . Effective April 5, 1990

Brewton, AL—Brewton Muni, VOR/DME RWY 30, Amdt. 6
Grand Canyon, AZ—Grand Canyon National Park, ILS/DME RWY 3, Amdt. 2
Nogales, AZ—Nogales Intl, VOR-A, Amdt. 3
Phoenix, AZ—Phoenix-Deer Valley Muni, NDB RWY 25L, Amdt. 1
Yuma, AZ—Yuma MCAS/Yuma Intl, ILS RWY 21R, Amdt. 4
Santa Maria, CA—Santa Maria Public, ILS RWY 12, Amdt. 8
Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 19
Bridgeport, CT—Igor I. Sikorsky Memorial, ILS RWY 6, Amdt. 7
Orlando, FL—Orlando Intl, RADAR-1, Amdt. 4
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS RWY 9R, Amdt. 16
Yazoo City, MS—Barrier Field, VOR/DME RWY 17, Amdt. 2, CANCELLED
Yazoo City, MS—Barrier Field, VOR/DME-A, Amdt. 5, CANCELLED
St. Louis, MO—Lambert-St. Louis Intl, VOR OR TACAN RWY 12L, Amdt. 11, CANCELLED
St. Louis, MO—Lambert-St. Louis Intl, VOR OR TACAN RWY 12R, Amdt. 20 CANCELLED
St. Louis, MO—Lambert-St. Louis Intl, NDB RWY 12R, Amdt. 10 CANCELLED
St. Louis, MO—Lambert-St. Louis Intl, NDB RWY 24, Amdt. 35 CANCELLED
Southern Pines, NC—Moore County, RNAV RWY 23, Amdt. 2
Lawton, OK—Lawton Muni, VOR RWY 35, Amdt. 18

. . . Effective March 8, 1990

Chicago, IL—Chicago-O Hare Intl, NDB RWY 9R, Amdt. 16
Chicago, IL—Chicago-O Hare Intl, ILS RWY 9R, Amdt. 13
Chicago, IL—Chicago-O Hare Intl, ILS RWY 27L, Amdt. 12
Norton, KS—Norton Muni, NDB RWY 17, Amdt. 1
Norton, KS—Norton Muni, NDB RWY 35, Amdt. 1
Kaiser/Lake Ozark, MO—Lee C Fine Memorial, VOR RWY 3, Amdt. 4
Springfield, MO—Springfield Regional, NDB RWY 14, Amdt. 10
Nashville, TN—Nashville International, VOR RWY 31, Amdt. 26
El Paso, TX—West Texas, VOR/DME-A, Amdt. 2

. . . Effective January 31, 1990

Lanai City, HI—Lanai, VOR OR TACAN RWY 3, Amdt. 5

. . . Effective January 25, 1990

Santa Rosa, CA—Sonoma County, VOR/DME RWY 14, Amdt. 2
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 16

. . . Effective January 18, 1990

Anchorage, AK—Anchorage Intl, ILS RWY 6R, Amdt. 8
Anchorage, AK—Anchorage Intl, LOC RWY 6L, Amdt. 7

[FR Doc. 90-3203 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 640

RIN 2125-AC52

Certification Acceptance; Coverage

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Highway Administration (FHWA) is amending its regulation on Certification Acceptance (CA) by updating the physical construction cost figure used for eligibility regarding a limited CA application procedure as provided in 23 CFR 640.107. This amendment is being issued to reflect inflationary trends in construction cost indices, increase State operating flexibility, and to reduce administrative burdens. A State may now elect to utilize limited-coverage under a simplified CA application procedure if the projects are estimated to cost less than $1 million as opposed to $500,000.

EFFECTIVE DATE: February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Steiner Silence, Office of Engineering, (202) 366-0334, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Certification Acceptance (CA) is the alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid projects not on the Interstate System. This procedure allows State highway agencies to use their laws, regulations, directives and standards to construct certain eligible Federal-aid projects with less Federal oversight. The CA process is administered under provisions contained in 23 CFR part 640.

Limited CA is a simplified procedure that allows State highway agencies to limit CA coverage to projects which are both (1) determined to be categorical exclusions in accordance with 23 CFR part 771, and (2) estimated to cost less than $500,000 for physical construction. Limited CA allows States to administer specific projects simply by following the procedures found in their approved Secondary Road Plan.

The FHWA believes the $500,000 limit for physical construction, that was established in 1978, should be raised to $1 million in order to reflect current construction cost indices. This change will have a negligible impact on the Federal-aid highway program since (1) few States use the limited CA procedure—most States adopted full or modified CA procedures that are not governed by this dollar threshold, and (2) the projects affected by this change should be similar to those affected when the original regulation was published in 1978.

Regulatory Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This amendment is being issued solely to reflect the increase in construction cost

indices since the 1978 regulation was issued and to allow the States increased flexibility to administer their Federal-aid highway programs. By revising the threshold figure from $500,000 to $1 million, the FHWA is merely respecifying the type of project to which the initial regulation applied. Since the revision included in this document is technical in nature and makes no substantive changes to the CA regulations, except for coverage, the FHWA finds good cause to make the amendment final without the opportunity for comment and without a 30-day delay in effective date required by the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information due to the technical nature of the document. Accordingly, the amendment is effective upon publication.

Since this amendment does not alter the basic design criteria for highway construction projects and the burdens imposed on the States are not affected, except to the extent that administrative burdens may be reduced, the impact on the overall highway program is negligible. Therefore, a full regulatory evaluation has not been prepared. For the foregoing reasons, and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

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

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 640

Certification acceptance, Grant programs—transportation, Highways, Roads.

Issued on: February 2, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, part 640 as set forth below:

PART 640—CERTIFICATION ACCEPTANCE

1. The authority citation for part 640 continues to read as follows:

Authority: 23 U.S.C. 101(e), 117, and 315; 49 CFR 1.48(b).

2. In § 640.107, paragraph (d)(2) is amended by changing the dollar amount from "$500,000" to "$1 million." Paragraph (d), as revised, now reads as follows:

§ 640.107 Coverage.

* * * * *

(d) A simplified CA application procedure is provided in paragraph (b) of § 640.109 of this regulation should a State desire to limit coverage to projects which are both (1) determined to be categorical exclusions in accordance with 23 CFR part 771 and (2) estimated to cost less than $1 million for physical construction. Such limited-coverage State certification will apply only to the FHWA responsibilities for project plans, specifications, estimates, surveys, contract award, design, inspection, and/or construction.

[FR Doc. 90-3228 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 291

[Docket No. R-90-1461; FR-2704-X-02]

RIN 2502-AE80

Single Family Property Disposition Homeless Initiative; Announcement of OMB Control Number and Effective Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Technical amendment.

SUMMARY: On January 11, 1990, the Department published an interim rule revising HUD regulations to describe the policies and procedures for the disposition of HUD-acquired single family properties for use by the homeless. Certain sections in that interim rule were not made effective because they contained information collection requirements that had been submitted for approval to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980, and were pending approval. The purpose of this document is to announce the effective date of those sections and to amend those regulations to include the OMB control number at the places where these information collection requirements are described.

EFFECTIVE DATE: The effective date for 24 CFR 291.50 and 291.130(d) (interim rule published on January 11, 1990, at 55 FR 1156) is February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Single Family Property Disposition Division, Room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 755-5740 or, for hearing and speech-impaired, (202) 755-3938. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in 24 CFR 291.50 and 291.130(d) (interim rule published on January 11, 1990, at 55 FR 1156) were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and assigned the control number listed.

List of Subjects in 24 CFR Part 291

Homeless, Fair housing, Surplus government property, Housing standards, Mortgages, Health, Drug abuse, Lead poisoning, Conflict of interests, Civil rights, Loan programs; housing and community development.

Accordingly, the Department amends 24 CFR part 291 as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for part 291 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709 and 1715b); sec. 2, Housing Act of 1949 (42 U.S.C. 1441); sec. 2, Housing and Urban Development Act of 1968 (42 U.S.C. 1441a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Sections 291.50 and 291.130(d) of title 24 of the Code of Federal Regulations are amended by adding at the end of each section the following statement:

(Approved by the Office of Management and Budget under Control Number 2502-0412.)

Dated: February 7, 1990.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 90-3230 Filed 2-9-90; 8:45 am]

BILLING CODE 4210-27-M

PANAMA CANAL COMMISSION

35 CFR Part 119

RIN 3207-AA25

Licensing of Officers

AGENCY: Panama Canal Commission.

ACTION: Interim Rule with Request for Comments.

SUMMARY: The Panama Canal Commission is revising subpart F "Engineers" of part 119, title 35 Code of Federal Regulations, to create a new license for the position of Assistant Engineer (Watch Standing). Other sections of the subpart are revised where appropriate. This change reflects the agency's desire to bring the licensing program more into line with the functions actually needed to be performed by certain marine personnel employed by the Panama Canal Commission.

EFFECTIVE DATE: The amendments made herein are effective upon publication. *Written Comments* should be submitted on or before March 14, 1990.

ADDRESSES: Comments should be sent to Assistant to Chairman and Secretary, Panama Canal Commission, 2000 "L" Street NW., Suite 550, Washington, DC 20036-4996 or Panama Canal Commission, Marine Director, APO Miami 34011-5000.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, Telephone: (202) 634-6441 or Captain George Hull, Marine Director, telephone in Balboa Heights, Republic of Panama, 011-507-52-4500.

SUPPLEMENTARY INFORMATION: By a document published on March 30, 1978 (43 FR 13382), the Panama Canal Commission sought to effect a modernization of its licensing program for marine engineers, thereby making the program more responsive to the needs of the Canal agency. The purpose of this document is to promulgate a new section, § 119.226, which establishes licensing standards and qualifications for the new category of Assistant Engineer (Watch Standing)—Towboats.

The towboats, with an engine room electronic monitoring system, presently manned by a Panama Canal oiler, will be manned on each operational watch by an Assistant Engineer (Watch Standing). Towboats without an engine room electronic monitoring system are presently manned by Panama Canal Chief Engineers on each operational watch; however, as the Chief Engineer positions are eliminated by attrition, they will be replaced by Assistant Engineers (Watch Standing).

In addition, where appropriate, §§ 119.221 and 119.223 will be revised to take into account the new license for the Assistant Engineer (Watch Standing) position. Specifically, § 119.221 will add to the list of engineer licenses issued by the Commission, that of Assistant Engineer (Watch Standing). Section 119.223 will add a new paragraph (d) to provide another avenue in which to obtain a Chief Engineer motor vessel's license with the Panama Canal Commission.

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year, and secondly, that the rule would not result in a major increase in costs or prices for consumers, individual industries, local governmental agencies or geographic regions.

Further, the agency has determined that implementation of the rule will have no adverse effect on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 35 CFR Part 119

Panama Canal, Towboats, Marine engineers.

Accordingly, 35 CFR part 119 is being amended as follows:

PART 119—LICENSING OF OFFICERS

1. The authority citation for part 119, subpart F, continues to read as follows:

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

2. Section 119.221 is revised to read as follows:

§ 119.221 Grade and type of engineer licenses.

Engineer licenses issued under this part are limited to the grades of Chief Engineer, Assistant Engineer and Assistant Engineer (Watch Standing) on steam vessels, motor vessels or steam and motor vessels.

3. Section 119.223 is amended by revising paragraph (c) and by adding paragraph (d) to read as follows:

§ 119.223 Chief engineer, motor vessels, experience required.

* * * * *

(c) Hold a valid license as Chief or Assistant Engineer of motor vessels issued by an authority outside the Panama Canal and have served at least 260 eight-hour watches as a licensed officer in charge of an engine room on motor vessels of at least 3000 horsepower; or

(d) Hold a valid license as Assistant Engineer (Watch Standing) of motor vessels, and have served at least 520 eight-hour watches as licensed officer in charge of an engine room watch on motor vessels of at least 3000 horsepower.

4. Section 119.226 is added to read as follows:

§ 119.226 Assistant Engineer (Watch Standing), Motor Vessel; Experience Required.

In order to be eligible for examination for the license of Assistant Engineer (Watch Standing) of motor vessels, an applicant therefore must:

(a) Have graduated from the marine engineering program of a recognized maritime academy; or

(b) Have graduated from a recognized marine engineer apprentice program; or

(c) Have graduated from the professional (college-level) marine engineering program of a recognized school of technology, and have completed three months of service in the engine department of a steam and/or motor vessel under the supervision of a licensed engineer; or

(d) Have graduated from the professional (college level) mechanical or electrical engineering program of a recognized school of technology, and have completed six months of service in the engine department of a steam and/or motor vessel under the supervision of a licensed engineer; or

(e) Have three years of service in the engine room of a steam and/or motor vessel, eighteen months of which must have been as a qualified member of the engine department or equivalent supervisory position. (A qualified member of the engine department is any

person below the rating of licensed officer and above the rating of coal passer, wiper or assistant electrician, who holds a current, valid permanent certificate of service as a qualified member of the engine department issued by the U.S. Coast Guard or a currently valid equivalent certificate of service issued by the Government of Panama. Ratings included are those of donkeyman, refrigerating engineer, electrician, machinist, pumpman, deck engine mechanic, and engineman.)

Dated: January 19, 1990.

Fernando Manfredo, Jr.,

Acting Administrator, Panama Canal Commission.

[FR Doc. 90-3255 Filed 2-9-90; 8:45 am]

BILLING CODE 3640-04-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6765

[OR-943-00-4214-10; GP0-084; OR-21768 (WASH), OR-21783 (WASH)]

Partial Revocation of the Secretarial Order Dated December 26, 1913, and the Bureau of Land Management Order Dated June 18, 1947; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order and a Bureau of Land Management order insofar as they affect 2,210.53 acres of public domain lands for the Bureau of Reclamation's Columbia Basin Project. The Bureau of Reclamation has determined that the lands are no longer needed for the purpose for which they were withdrawn. The revocation is needed to permit disposal of the lands through land exchange. This action will open the lands to surface entry. The lands have been and remain open to mineral leasing and are temporarily closed to mining by a Notice of Realty Action.

EFFECTIVE DATE: March 14, 1990.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated December 26, 1913, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 9 N., R. 30 E.,
Sec. 4, lots 1 and 2, and S½N½;
Sec. 6, lots 1 and 2, and S½NE¼;
Sec. 14, SW¼, W½SE¼, and W½E½SE¼.
T. 10 N., R. 30 E.,
Sec. 26, W½SE¼ and SE¼;
Sec. 34, E½NW¼.
The areas described aggregate 999.03 acres in Franklin County.

2. The Bureau of Land Management Order dated June 18, 1947, is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

T. 9 N., R. 29 E.,
Sec. 4, unnumbered lots 1, 2, 3, and 4, S½N½, and those portions of the N½SW¼ and N½S½SW¼ lying westerly of the centerline of Franklin County Road No. 68.
T. 10 N., R. 29 E.,
Sec. 26, E½SE¼;
Sec. 28, that portion of the E½ lying easterly of the centerline of Taylor Flats Road;
Sec. 34, E½NE¼ and SE¼.
T. 10 N., R. 31 E.,
Sec. 6, SE¼.
The areas described aggregate approximately 1,211.50 acres in Franklin County.

3. At 8:30 a.m., on March 14, 1990. The lands described in paragraphs 2 and 3 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, any segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on March 14, 1990. Shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 5, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-3202 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-33-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-563; RM-6441, RM-6685]

Radio Broadcasting Services; Burkesville, KY, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 253C2 for Channel 252A at Cookeville, Tennessee, modifies the license of Station WHUB(FM) to specify operation on the higher class channel, substitutes Channel 297A for vacant but applied for Channel 254A at Spencer, Tennessee, substitutes Channel 300A for Channel 253A at Burkesville, Kentucky, and modifies WKYR, Inc.'s, construction permit for Station WKYR(FM) at its current site. In addition, this action allots Channel 224A to Russell Springs, Kentucky, as its first local service. *See* 53 FR 52740, December 29, 1988. Channel 253C2 can be allotted to Cookeville, Tennessee, in compliance with the Commission's minimum distance separation requirements, with a site restriction of 0.9 kilometers (0.6 miles) northwest at coordinates 36-10-25 and 85-30-40. Channel 297A can be allotted to Spencer, Tennessee, at coordinates 35-44-48 and 85-28-06. Channel 300A can be allotted to Burkesville, Kentucky, with a site restriction of 1.0 kilometers (0.6 miles) west at the construction permit site, at coordinates 36-47-30 and 85-22-47. Channel 224A can be allotted to Russell Springs, Kentucky, with a site restriction of 5.4 kilometers (3.3 miles) southwest, at coordinates 37-01-40 and 85-07-53. With this action, this proceeding is terminated.

DATES: Effective March 22, 1990; The window period for filing applications for Channel 224A, at Russell Springs, Kentucky, will open on March 23, 1990, and close on April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-563, adopted January 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Channel 253C2 and removing Channel

252A; at Cookeville, Tennessee, by adding Channel 297A and removing Channel 254A at Spencer, Tennessee; by adding Channel 300A and removing Channel 253A; at Burkesville, Kentucky; and by adding Russell Springs, Kentucky, Channel 224A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3160 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-324; RM-6774]

Radio Broadcasting Services; Ebenezer, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 280A to Ebenezer, Mississippi, in response to a petition filed by JimBar Enterprises. The coordinates for Channel 280A are 32-54-13 and 90-10-18 at a site 10.6 kilometers (6.6 miles) southwest of the community.

DATES: Effective March 22, 1990; The window period for filing applications for Channel 280A at Ebenezer will open on March 23, 1990, and close on April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-324, adopted Janaury 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Ebenezer, Channel 280A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3159 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-0015]

RIN 0648-AD04

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA announces approval of regulations to implement the Observer Plan provided for by Amendments 13 and 18 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska (FMPs), respectively. This action is necessary to implement specific provisions of the mandatory domestic observer program. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

EFFECTIVE DATE: February 7, 1990.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) that was prepared for Amendment 13 and 18 may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the Observer Plan are available by writing to the above address or to the Observer Program Office, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Seattle, Washington 98115. Copies are also available through the NMFS Computer Bulletin Board in Juneau, phone: 907-586-7609.

FOR FURTHER INFORMATION CONTACT: Robert Maier, Fishery Biologist, Alaska Fisheries Science Center, Seattle, NMFS at 206-526-4195 or Janet Smoker, Fishery Management Biologist, Alaska Region, Juneau, NMFS at 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

The Secretary approved Amendments 13 and 18 under section 304(b) of the Magnuson Act. Those amendments contained certain management measures as listed in the final rule published at 54 FR 50386 (December 6, 1989). One of the listed measures authorized a comprehensive domestic observer program. An Observer Plan to implement provisions of this program has been prepared by the Secretary in consultation with the Council. Regulations were proposed to implement the Observer Plan (54 FR 51042, December 12, 1989) and comments were invited through December 21, 1989. Forty letters of comments were received. They are summarized and responded to in the "Response to Comments" section, below.

The Secretary, after reviewing comments received, including those submitted by the Council during its December 5-8, 1989 meeting, has determined that final regulations implementing the Observer Program are necessary for fishery conservation and management, and are consistent with the Magnuson Act and other applicable law.

Based on comments received, and expressed Council intent for the observer program, the contents of the Observer Plan have been updated. Main features of the Observer Plan are described below, including the responsibilities that will be imposed on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS-certified contractors who will provide observers to groundfish fishing vessels and shoreside processors. This notice also describes observer qualifications, standards of observer conduct, conflict of interest standards for observers and contractors, and reasons, for revoking contractor or

observer certifications. Implementation aspects of the Observer Plan are described as follows:

Responsibilities of NMFS—The NMFS is responsible for (1) the overall program administration, (2) training or certification of observers, (3) contractor certification, (4) debriefing of observers, (5) coordination of observer coverage for the subject fisheries, (6) monitoring of logistics, and (7) management of the data collected by the observers. Each of the aspects of NMFS responsibilities is further described as follows:

1. *Program administration.* Administration includes establishment of general program policy, specification of observer duties and qualifications, sampling methods, data format, and policy with respect to observer safety. It also includes specifications of contractor certifications and overseeing NMFS personnel and budgets.

2. *Observer training and certification.* Observers who meet the basic educational and experience qualifications stated in the Observer Plan and who are hired by certified contractors to be placed onboard domestic vessels will be required to successfully complete a 2½ week training certification program conducted by NMFS, or its designated agent, prior to being deployed on board a domestic vessel or at a shoreside processing facility. Individuals who have successfully completed either a foreign or domestic groundfish observer deployment in a program administered by NMFS will be required to attend only a two to four day briefing. Certification training will be provided, at a minimum, on a scheduled quarterly basis and more frequently if required. The training of observers is critical to the overall success of the observer program and the quality of information collected. Because observers will collect fisheries information for Federal management of the Alaska groundfish fisheries, training must be consistent and must respond to changing management and data collection needs. The observer certification may be revoked if the observer fails to perform assigned duties satisfactorily, or does not adhere to standards of conduct prescribed by NMFS.

3. *Contractor certification.* The NMFS must certify contractors prior to their providing observers to the industry to assure that the contractors do not have a financial or personal conflict of interest with the fishing vessel or shoreside processing facility owners, and to assure that the contractors understand their responsibilities. NMFS will review technical proposals submitted by prospective contractors that describe task performance to ensure that they are able to adequately provide the required services under the mandatory observer program. The costs of providing observers will not be considered in the evaluation. Firms submitting proposals judged adequate to provide services and which do not have a financial or personal conflict of interest will be included in a list of certified contractors from which industry members can obtain their required observers. A contractor could lose certification if the contractor is found to have a financial or personal conflict of interest with either vessel or shoreside processor owners or the contractor is deficient in the performance of the duties prescribed by NMFS.

4. *Observer debriefing.* Debriefing observers will be done by staff of the NMFS observer program located at debriefing sites. Debriefing sites will be at Dutch Harbor and Kodiak, Alaska, and such other major fishing ports as deemed necessary by NMFS, and at the Alaska Fisheries Science Center (AFSC) in Seattle, Washington. Observers will be debriefed between deployments to make information available for editing, assimilation, and analysis.

5. *Coordination of observer coverage and logistics.* NMFS will coordinate observer coverage with certified contractors to ensure scientifically adequate sampling and to ensure receipt of information from the observers.

6. *Data management.* NMFS is responsible for the entry, editing, and database management of the data collected by observers.

Responsibilities of vessel operators and managers of shoreside processing facilities. The vessel operators and managers of shoreside processing facilities are responsible for costs of deploying observers on board vessels or at shoreside processing facilities including but not limited to bunk, meals and transportation. They are also responsible for coordinating with NMFS-certified contractors to assure that observer coverage meets requirements contained in regulations. Any vessel operator or manager of a shoreside processing facility who is required to accommodate an observer is responsible for obtaining a NMFS-certified observer from any of the certified observer contractors. The vessel operator or manager of a shoreside processing facility will pay the cost of the observer directly to the contractor.

Prior to the vessel beginning fishing, the observer must notify the AFSC, through the contractor, that he/she is on board the vessel and prepared to perform his/her duties as an observer. Prior to receiving groundfish and commencement of processing operations by a shoreside processing facility, an observer must notify the contractor that he/she is on site and prepared to perform his/her duties.

A vessel operator must maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(a) Adequate fire fighting equipment;

(b) One or more life rafts capable of holding all persons on board; and

(c) Any other equipment required by regulations pertaining to safe operation of the vessel.

A manager of a shoreside processing facility must:

Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

Responsibilities of certified observer contractors. Contractors must be certified by NMFS. Firms holding a contract with NMFS to provide observer services will be included in the list of certified observer contractors. No limit is placed on the number of contractors which can participate in the observer program and a vessel owner or manager of a shoreside processing facility can choose to work with whichever contractors they select. Contractors are responsible for the following tasks:

1. Recruiting, evaluating, and hiring of qualified candidates to serve as observers.

2. Ensuring that prospective observers have obtained the required NMFS certification.

3. Providing observer salaries, benefits, and personnel services.

4. Providing workmen's compensation and insurance to cover and protect observers injured in the performance of their duties.

5. Providing all deployment logistics to make observers available and to place the observers on board the fishing vessels or at shoreside processing facilities.

6. Providing substitute observers in the event an observer has to be removed from, or leaves, a vessel or a shoreside processing facility.

7. Arranging observer debriefings at specified debriefing ports.

8. Assuring that all observer catch messages and other required

transmissions between the observer and NMFS are delivered to NMFS within a time specified by the Regional Director.

9. Assuring that all trip data, reports, and specimens collected by observers are delivered to NMFS within five working days of the completion of each observer trip.

10. Assuring that all gear and equipment issued to observers by NMFS is returned to a storage place designated by NMFS within five working days of the completion of the observer trip.

For purposes of the Paperwork Reduction Act only, both the contractors and the observers, while not direct employees of the United States government, are nonetheless, acting as agents or representatives of the government.

Observer Qualifications

Observers placed onboard domestic vessels or at shoreside facilities by a contractor must be certified by NMFS to serve as an observer under this program. To be certified by NMFS, an observer should have a bachelor's degree in fisheries or wildlife biology or related field of biology and natural resource management. If sufficient numbers of qualified and acceptable applicants with the above educational background are not available, individuals with senior standing within one of those programs listed above or individuals with an Associate in Arts (A.A.) degree in fisheries or wildlife science or technology may be substituted. If sufficient numbers of individuals with any of the above qualifications are not available, the contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

Prior experience as an observer through a program administered by the NMFS Observer Program of the AFSC is not required. Individuals who have satisfactorily served as an observer for a program administered by the Observer Program of the AFSC during the past 24 months must attend a two to four day certification briefing provided by NMFS prior to deployment. Individuals who have not served as an observer or who last satisfactorily served as an observer prior to the past 24 months must attend and successfully complete a 2½ week certification training provided by the AFSC prior to deployment.

Prior to deployment, each observer must receive a NMFS certification acknowledging successful completion of the NMFS training program. Each observer must agree to provide all data collected to NMFS. Each observer must agree to adhere to the NMFS standards of conduct for observers.

Standards of Observer Conduct

Observers must abide by the standards of conduct listed in title 15 CFR Subtitle A, part 0 of the Department of Commerce Regulations and the following:

General standards of behavior:

In addition to the standards given above, the observer must avoid any behavior which could adversely affect the confidence of the public in the integrity of the program. Observers are thus expected to conduct themselves in a manner which will reflect favorably upon the program. This means acting in an honest, professional, business-like manner in all situations. Specific guidelines follow:

(1) Observers must diligently perform their assigned duties.

(2) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations that are observed. Falsification of observer data will be grounds for decertification.

(3) Observers must keep all collected data and observations made onboard the vessel or in the processing plant, confidential according to the Federal guidelines on confidentiality.

(4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the observer program as a whole. These actions or activities include, but are not limited to:

(a) Excessive drinking of alcoholic beverages (however, if the vessel or shoreside facility maintains a stricter alcoholic beverage policy for its employees, then the observers must comply with said policy);

(b) Use or distribution of illegal drugs; and

(c) Physical or emotional involvement with vessel or shoreside processing plant personnel.

Behavior which is contrary to these standards or to the intent of these standards are grounds for the decertification of the offending observer.

Conflict of Interest Standards for NMFS Certified Observers and Contractors

Contractors certified by NMFS to provide observer services to the fishing industry, and observers certified by NMFS to perform observer duties, cannot have either a financial or personal interest in the vessels or shorebased facilities they are employed to observe. A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest of business relationship in that vessel or shorebased facility. A personal interest is defined as an interest or involvement held by the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit. The provision for remuneration of certified observers does not constitute a conflict of interest.

(a) Conflict of interest standards for certified observers.

A NMFS-certified observer:

(1) Must be employed by an independent contracting agent certified by NMFS to provide observer services to the industry;

(2) May not have a financial interest in the observed fishery;

(3) May not have a personal interest in the vessel or shoreside facility to which he or she is assigned;

(4) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions, or judgement.

(b) Conflict of interest standards for certified observer contractors.

A NMFS-certified observer contractor:

(1) May not be an individual, partnership, or corporation with a personal or financial interest in the observed fishery, shoreside facilities or vessels, other than the provision of observers;

(2) Shall assign observers to vessels or shoreside facilities without regard to requests from vessel owners or operators for a specific individual;

(3) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer contractor's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions or agreements.

Reasons to Revoke Contractor or Observer Certification

A. The NMFS certification of an observer can be revoked by NMFS for the following reasons:

(1) A certified observer fails to satisfactorily perform the duties of an observer as prescribed by NMFS.

(2) A certified observer fails to abide by the standards of conduct described by NMFS.

(3) A certified observer is shown to have a conflict of interest with respect to the fishery, shoreside facility, or vessel to which he/she is assigned.

B. The NMFS certification of a contractor to provide observer services to industry can be revoked by NMFS for the following reasons:

(1) A certified contractor is shown to have a conflict of interest with respect to the fishery, shoreside facilities or vessels to which observers are being provided.

(2) A certified contractor has failed to satisfactorily perform the responsibilities of certified observer contractors prescribed in the observer plan.

Implementation Policy

(a) *Observer program start up and enforcement.* Full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice. NOAA recognizes, however, that some vessel operators and managers of shorebased processing facilities may experience start-up problems. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

(b) *Vessel participation.* Operators of all domestic fishing and processing vessels equal to or longer than 125 feet length overall will be required to carry an observer during all days expended during fishing trips.

For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaska port or leaves the EEZ and contiguous territorial sea.

Length overall (LOA) means horizontal length from stem to stern (see definition at §§ 672.2 and 675.2 of the regulations).

Operators of all domestic fishing and processing vessels that are 60 feet LOA and longer but less than 125 feet LOA and which fish more than 10 days during any calendar quarter (Janaury-March, April-June, July-September, and October-December) must carry an observer for at least 30 percent of the days expended during fishing trips undertaken during that calendar quarter.

Vessels less than 60 feet in LOA must carry observers only if required by the Regional Director.

Compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

(c) *Shoreshide processor participation.* Managers of shoreside facilities that annually receive 10,000 mt, round weight, or more of groundfish must have an obsever at the facility on each day it receives groundfish during those months in which they receive a total of 1,000 mt or more of groundfish for the month.

Managers of shoreside facilities that annually receive between 1,000 mt and 10,000 mt, round weight, of groundfish must have an observer at the facility for 30 percent of the days of any month in which they receive a total of 500 mt or more of groundfish for that month.

Managers of shoreside processing facilities that annually receive less than 1,000 mt, round weight, of groundfish must have an observer if required by the Regional Director.

(d) *Exemption within the waters largely regulated by the State of Alaska.* With respect to observers on vessels, the Observer Plan does not apply in the following waters where groundfish are managed entirely by the Alaska Department of Fish and Game:

Clarence Strait and Chatham Strait—Waters shoreward of a line connecting the following points in the order listed: intersection of 55°25'20" N. latitude and 132°41'32" W. longitude; Cape Muzon Light; northernmost tip of Eagle Point on Dall Island; southernmost tip of Point Arboleda; northernmost tip of Point San Rogue; southernmost tip of Cape Ulitka; northernmost tip of Cape Lynch; southernmost tip of Helm Point; westernmost tip of Hazy Island; Cape Ommaney Light, just north of 57°30'00" in Peril Strait; westernmost tip of Column Point; northernmost tip of Soapstone Point; southernmost tip of Cap Spencer; Yakobi Rock; and Yakobi Island.

Prince William Sound—Waters shoreward of lines connecting the following points in the order listed: Point Whitshed; Point Bentlinck; Cape Hinchenbrook; Zaikof Point; Cape Cleare; and Cape Puget.

Secretarial authorization for the mandatory domestic observer program set forth in Amendments 13 and 18 was based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. He implements, therefore, specific provisions of the Observer Plan. As additional information is obtained through the observer program, the Secretary will work with the industry to develop and refine the domestic Observer Plan to meet the needs of both fishery management agencies and the fishing industry.

Secretarial policy requiring 100 percent observer coverage of vessels with an overall length equal to or greater than 125 feet long remains unchanged from the proposed rule and draft Observer Plan. In 1989, 69 vessels were in this size category. Assuming 142 fishing days per vessel, which was the rate in 1989, 9,798 observer days could be required for this segment of the fleet in 1990 at a cost of $2,449,500 based on a cost estimate of $250 per observer day.

Secretarial policy, which establishes a new minimum length of up to 60 feet for vessels that will not be required to carry an observer, varies from that stated in the proposed rule and draft Observer Plan. Those documents proposed that operators of vessels under 50 feet would not be required to carry an observer, unless they are required to do so by the Regional Director. Comments received [see "Response to Comments Received" section, below) indicated that benefits of placing observers on vessels in the 50–60 feet size category is not appropriate, because these vessels catch such small amounts of groundfish that the cost would not be justified. The Secretary analyzed vessels between 51 and 59 feet with repsect to amounts that they harvested in 1989. Vessels in this size category numbered 196 and harvested 13,542 mt of groundfish, or 1.0 percent of the total harvest by domestic annual processing (DAP) vessels.

Many of these vessels are "limit seiners"—vessels that have a keel length of 50 feet but an length overall of 58 feet. They are used primarily to purse seine for salmon, but are also used to a small extent to catch sablefish and rockfish with hook-and-line gear. The Secretary has determined that the benefits gained by placing observers on these relatively small, albeit numerous vessels, do not justify the costs that would be imposed on them. Conversely, vessels between 60 and up to 125 feet length overall can more easily accommodate an observer and harvest a significant amount of groundfish. In 1989, 217 vessels in this size categroy harvested 253,587 mt of groundfish, or 19 percent of the total harvest of 1.3 million mt delivered to U.S. processors. The Secretary has determined that the significant harvest by these vessels and the information obtained from these operations justify the observer costs.

Secretarial policy for shoreside processing facilities varies from that stated in the draft Observer Plan. The final Observer Plan now requires shoreside processing facilities that receive 10,000 mt or more of groundfish

annually to have an observer for only during those months in which the total amount of groundfish received is 1,000 mt or more. The number of occurrences (months) in which these facilities received landings of 1,000 mt or more per month was 53. Assuming 30 days per month, 1,590 observer days would be required for this category of processing facility in 1990 at a cost of $397,500 based on $250 per day.

The Observer Plan also requires shoreside processing facilities that receive at least 1,000 mt but less than 10,000 mt of groundfish annually to have an observer for only 30 percent of the days during those months in which the total amount of groundfish received is 500 mt or more. The Secretary determined that the amounts of groundfish received during some months are small in the aggregate and the benefits gained by having observers do not justify the costs. Based on 1989 landings, 13 facilities had total landings of at least 1,000 mt but less than 10,000 mt. The number of occurrence (months) in which these facilities received landings of 500 mt or more per month was 63. Assuming 30 days per month, and 30 percent coverage, 623 observer days would be required for this category of processing facility in 1990 at a cost of $155,750 based on $250 per day.

Differences Between the Final Rule and the Proposed Rule

1. A definition of overall length is added in §§ 672.2 and 675.2 to define lengths of vessels that participate in the observer program.

2. Paragraph (f) *Exemption*, in § 672.27 and § 675.25 is deleted, and any references in the proposed rule to paragraph (f) are deleted. These paragraphs in the proposed rule had listed one exemption that might be allowed to excuse a vessel operator or manager of a shoreside processing facility from complying with the Observer Plan. Based on Council comments, the Secretary has determined that no exemptions will be allowed. The Council, as well as the Secretary, believes that the management of the public fishery resources can only be accomplished through the attainment of observer information and that allowing fishing or processing to occur without opportunity for representative sampling is contrary to the public interest.

Difference Between Implementation Policy in the Proposed Observer Plan and the Final Observer Plan

The proposed Observer Plan did not include policy with respect to start-up problems in complying with the Observer Plan by vessel operators and managers of shorebased processing facilities who are required to have 100 percent observer coverage. The final Observer Plan includes start-up policy. While full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice, good faith efforts by operators and managers to obtain observers as soon as possible will be considered when enforcing compliance with the Observer Plan.

In the proposed Observer Plan, the Secretary preliminarily determined that vessels shorter than 50 feet in length would not be required to comply with the Observer Plan. In response to comments received, the Secretary has determined that vessels under 60 feet will not be required to comply unless specifically required to do so by the Regional Director. Vessels 60 feet length overall and longer, however, must be required to comply with the Observer Plan. Reasons for these changes are provided above.

The final Observer Plan also specifies that vessels 60 feet or longer but less than 125 feet that conduct actual fishing operations for only 10 days of any calendar quarter will not be required to carry an observer. If during any calendar quarter they fish for more than 10 days, then they will be required to carry an observer for at least 30 percent of their fishing trips during those calendar quarters.

In the proposed Observer Plan, the Secretary preliminarily determined that shoreside processing facilities that receive 10,000 mt or more of groundfish during the fishing year must have an observer on site for each day they receive groundfish. In response to comments received, the Secretary has determined that an observer must be present at such processing facilities each day those facilities receive groundfish during those months when total groundfish receipts are 1,000 mt or more. This change accommodates those shorebased processing facilities that receive large amounts of groundfish over a short period of time and then receive only small amounts during periods when other fisheries (e.g., salmon fisheries) dominate the operations. Rather than employing an observer with little to do during most months, managers of shorebased processing facilities can plan for those months in which they will receive 1,000 mt or more during a month and employ an observer for just those months.

Further, rather than requiring those facilities that receive between 1,000 mt but less than 10,000 mt annually to have an observer during 30 percent of the days they receive groundfish, the Secretary has determined that this coverage will apply only for those months when the total amount of groundfish received is 500 mt or more. Again, managers of shorebased processing facilities can plan for those months in which they will recieve 500 mt or more during a month and employ an observer for just those months.

The Observer Plan now exempts vessel compliance in certain areas that lie in the Southeast Alaska archipelago and in Prince William Sound. Fisheries in these areas are managed entirely by the Alaska Department of Fish and Game.

The proposed Observer Plan was silent with respect to compliance of vessel operators making landings of groundfish that were caught in other fisheries. The Observer Plan now makes clear that compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

The Observer Plan also excludes operators of catcher vessels from having to carry an observer in mothership operations in which catcher vessels transport the codend part of a trawl through the water to a mothership in such a manner that no sorting of catch is possible. An observer would be on a mothership and would be able to record all required information. In this type of operation, an observer on a catcher vessel would serve little purpose.

The preamble to the final rule now includes more information that is also part of the Observer Plan. Additional information is found under the following subheadings: Observer Qualifications; Standards of Observer Conduct; Conflict of Interest Standards for NMFS Certified Observers and Contractors; and Reasons to Revoke Contractor or Observer Certification. This information was part of the Observer Plan that was provided by the Regional Director to the public during the December 6–21, 1989 public comment period.

Response to Comments Received

Forty letters of comments were received during the comment period. Most comments were supportive of the observer program, but some contained recommendations for changes resulting from different industry perspectives. Most of the comments focused on the following issues: small boats cannot carry observers without incurring unfair costs; the 30 percent observer coverage requirement is too high; observer coverage should be calculated semi-

annually rather than quarterly; observers at shore-based processing facilities are redundant if vessels delivering to them also have observers; no relationship exists between vessel length and catch; and the Federal government should pay for the observer program. Comments are summarized and responded to below.

Comment 1. No exemptions should be allowed for operators of vessels and managers of shorebased processing facilities that are required to comply with the Observer Program.

Response: The final rule has excluded provision for exemptions. Circumstances will arise that warrant an exemption, but provision for exemptions without defining exactly those circumstances would result in confusion as to whether an exemption might be granted. Some participants might take advantage of an exemption provision and jeopardize the intent of the observer program. Individual circumstances will be considered on a case-by-case basis when making citations or when assessing penalties.

Comment 2. Observer coverage should be based on actual production, either historical or theoretical, rather than on vessel length, because a relationship between vessel length and production does not exist.

Response: While the relationship between production and vessel length is not linear for each gear type, examination of catch data shows that, overall, larger vessels harvest more groundfish than do smaller vessels. For purposes of the observer program, vessel length was a parameter that could best be defined for purposes of industry planning. Another parameter such as production might be used if justified by experience gained from the observer program.

Comment 3. Vessels in the 50–124 foot category should be covered semi-annually rather than quarterly.

Response: Information obtained from the segments of the observed fleet must be representative if NMFS is to use it to manage those fleet segments. To be truly representative, it should be collected according to statistically valid means. Ideally, the information ought to be collected in a completely randomized manner. Because such collections are not feasible, information must be collected over as short a time period as possible to be reasonably representative. If observer coverage is semi-annual rather than quarterly, the frequency of the information collected will be reduced. It will, therefore, be less representative, and less useful for management purposes. Quarterly observer coverage will be required.

Comment 4. Thirty percent coverage on a large number of vessels (e.g., 352 vessels) is unnecessary and should therefore be changed to 20 percent.

Response: As high a percent coverage as possible is necessary to obtain representative information for management purposes. Biological data is often variable and samples from too small a number of vessels would not be representative. Even though the total number of vessels is high, segments of the fleet use diverse gear types and participate in different fisheries in geographically separate locations. In the Gulf of Alaska, for example, as few as two or three trawl vessels may be fishing for rockfish at any one time, and they may be miles apart. To be representative, therefore, 30 percent coverage is required. This level of coverage may be reduced if experience gained indicates that a reduction is warranted without jeopardizing the program.

Comment 5. The vessel size category system for assigning observers does not take into account a vessel's ability to pay costs nor does it fairly distribute the costs.

Response: The composition of the groundfish fleet is diverse with respect to fishing power, earnings, and potential to afford observer coverage. The Secretary of Commerce does not have access to information on vessel net earnings to determine which vessels are unequally impacted by the Observer Plan. A tax on groundfish landings or production to obtain revenue with which to Federally fund observer coverage is likely a fair way to distribute costs. The Secretary is not authorized, however, under the Magnuson Act to levy taxes. After a year's experience with the observer program, new ways to more fairly distribute costs may become evident.

Comment 6. Observer coverage on catcher vessels is not necessary, because information can be collected from log books or by shoreside observers.

Response: The information that will be available from catcher vessels will be extremely useful in fishery management. Many of these vessels participate in fisheries in different areas, both geographically as well as bathymetrically than do catcher/processor vessels. Although information about retained catch from catcher vessels might be sampled by shorebased observers, information on discarded groundfish or prohibited species could not be collected other than by observers at sea. Even with the use of Federal logbooks, this information must be validated by at-sea observers. However, as previously stated, the Observer Plan does exclude catcher vessels in mothership operations in which the codend part of a trawl is transported through the water to the mothership in such a manner that no sorting of catch is possible.

Comment 7. The Secretary must give authority to local officials to exempt vessels from carrying an observer if the vessels are unable to do so.

Response: For purposes of conveying policy, no vessels will be exempt from carrying an observer. As a practical matter, circumstances will arise in which a vessel operator or manager of a shorebased processing facility has not been able to acquire or keep the services of an observer. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

Comment 8. Vessel operators should not be required to submit fishing plans prior to the start of a season.

Response: Vessel operators are not required to submit fishing plans. Vessel operators have the responsibility of working through the certified contractor to obtain sufficient observer coverage to satisfy the 30 percent coverage of their fishing effort.

Comment 9. Observers at shore-based facilities would have nothing to record, because sorting groundfish and prohibited species occurs at sea, and, therefore, the requirement that shoreplants have observers should be eliminated.

Response: Observers on vessels will not be able to observe vessel operations 24 hours a day, even on large vessels where 100 percent observer coverage is required. Actual coverage on vessels will likely be 30 percent or less. Less than complete information will be the result. Exacerbating the problem of partial data is policy that requires vessels less than 60 feet in overall length to carry observers only when required by the Regional Director. Many of these vessels will be delivering catches to shore-based processing facilities. Observers at shore-based processing facilities will be able to partially fill this gap by being on hand to obtain information from landed catch. Even though prohibited species are required to be discarded at sea, experience has shown that some remain with the landed catches. Observers at shore-based facilities will be able to better document bycatch of prohibited species, which will result in more accurate total mortality estimates.

Comment 10. Costs should be borne by NOAA through a product value tax.

Response: The Secretary is not authorized under the Magnuson Act to tax products.

Comment 11. If shoreside observers are required, coverage should be based on monthly production to account for those shore-based facilities that produce large and small groundfish amounts seasonally, and thus avoid observer deployment during periods of small groundfish production.

Response: The Secretary has revised implementation policy such that shoreside processing facilities that process 10,000 mt or more of groundfish will need to have an observer only during the days in those months when total groundfish received is 1,000 mt or more for that month. Also, shoreside processing facilities that process 1,000 mt or more but less than 10,000 mt annually must have an observer for just 30 percent of the days during months when they receive 500 mt or more of groundfish.

Comment 12. If more cost effective, a NMFS staff person responsible for debriefing observers ought to fly to Kodiak rather than require several observers to fly to Seattle.

Response: The Secretary intends that observers be debriefed as close to the fishing grounds as possible. The Secretary also intends that the observer program be as cost effective as possible. Depending on circumstances, a debriefer will be sent to the observers rather than requiring observers to be sent to the debriefer.

Comment 13. The industry seeks assurance that information obtained from the observer program be kept confidential.

Response: Information collected by observers in the course of biological sampling is administratively confidential. This type of information may be released, but only with the consent of the vessel operator or manager of a shorebased processing facility. Information obtained by observers from the fishery industry, e.g., logbook and other information that reveals the business and identity of the vessel operator or name of a processing facility, is statutorily confidential. The Secretary may not release statutorily confidential information obtained from the fishing industry pursuant to the Magnuson Act. NOAA directives require the safekeeping of these data by Federal employees. Unauthorized release of statutorily confidential data is a Federal offense.

Comment 14. Will an observer be provided a survival suit or is that the responsibility of the vessel operator? Will a vessel operator need to provide for a larger life raft to accommodate an observer? Do vessels fishing inside of 3 miles need to carry an observer?

Response: Observers will be provided their own survival suits. Vessel operators must provide life rafts large enough to accommodate safely the entire crew and the observer. All vessels that have a Federal permit to fish for groundfish must comply with the observer program, with the exception of specified waters in Clarence Strait and Chatham Strait as well as Prince William Sound. See implementation policy, above for definitions of these internal waters.

Comment 15. A vessel operator must have the option to accept or reject a particular observer. A cadre of observers should be stationed in each major port, because too much time would be required to bring an observer from Seattle.

Response: This type of concern must be resolved between the vessel operator or manager of a shore-based facility, and the contractor. The Secretary is only concerned that vessel operators and managers of shoreside processing facilities comply with the Observer Plan.

Comment 16. Although vessels under a particular size and shoreside processing facilities that produce a minimum amount of groundfish annually do not have to accommodate an observer, provision should be made that even these entities must be covered in certain situations when required.

Response: Implementation policy dictates that, although vessels under 60 feet in length and shoreside processing facilities that receive less than 1,000 mt of groundfish a year normally will not have to accommodate an observer, the Regional Director reserves regulatory flexibility such that even these entities may have to accommodate an observer if required.

Comment 17. Observer coverage of medium size vessels should be based on 30 percent of their trips rather than on 30 percent of effort, because such coverage would be easier to document.

Response: Observer coverage based on trips would not be equitable. A vessel operator could comply by carrying an observer on a short trip and then make two long trips without an observer. Conversely, another vessel operator could make three long trips and carry an observer on just one of those trips. The burden would shift disproportionately to the vessel operator making the long trips. Observer coverage will be based on 30 percent of the days fished during fishing trips. For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaskan port or leaves the Alaska EEZ or territorial sea. Under this interpretation, transit time from ports such as Seattle cannot be used to gain credit for observer days.

Also, lost fishing time prior to fishing cannot be counted. Conceivably, a vessel operator could expend time without actually fishing to gain credit for observer days, discharge the observer, and then continue fishing with no observers on board. Once fishing has commenced, however, lost fishing time due to unforeseen circumstances (e.g., weather or mechanical breakdowns) will be counted toward observer days until the vessel arrives at an Alaskan port or departs the EEZ or the territorial sea. Transit time to ports outside the EEZ or the territorial sea (e.g. Seattle or the "donut hole") will not count toward observer days. With the use of Federally required fishing log books, a vessel operator will be able to know the number of days that he has already fished. He will also be expected to be able to estimate the number of days he intends to fish in the future. Once a trip has started, lost fishing time for unforeseen circumstances (e.g., engine breakdowns, bad weather, etc.) will be counted in favor of the vessel operator. That is, the number of days the observer is on board is counted toward the 30 percent coverage even though fishing has been curtailed due to unforeseen circumstances beyond the vessel operator's control.

Comment 18. Observers should not collect information that would be used for compliance purposes.

Response: Observers are not enforcement agents. Nonetheless, information they collect during their role in collecting information about total fishing mortality of groundfish and prohibited species will be submitted to NMFS for purposes of monitoring quotas and verifying compliance with regulations.

Comment 19. Observers should be trained in Alaska. Experience gained through fishing should count with respect to fulfilling observer qualifications.

Response: An observer's ability to professionally fulfill his responsibilities is independent of where he is trained. Training, therefore, will not be restricted to just Alaska sites. Although actual fishing experience is useful, the aspects of carrying out responsibilities with respect to biological sampling necessitates formal training in biological sciences.

Comment 20. Registered length is superior to length overall for purposes of determining participation.

Response: Registered length is no longer favored as a measure of vessel length. Different measurements (e.g., keel length, water line length) have been all referred to as registered length. Length overall is superior, because it is measurable and easiest to document.

Comment 21. Domestic fishermen are entitled to same exemption process as foreign and joint venture fishermen.

Response: The purpose of the observer program is to obtain information necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries. This information will be used to make informed decisions about conserving groundfish stocks or allocating among U.S. fishermen, who now dominate this groundfish fishery. Past history for providing exemptions for joint venture or foreign fishermen is not relevant.

Developing a rigorous system whereby U.S. vessel operators could gain an exemption would be administratively burdensome and not in the National interest, given the complexities of potentially valid reasons for exemptions. Nonetheless, NOAA will consider good faith efforts by operators and managers to maintain required observer coverage when enforcing compliance with the Observer Plan.

Comment 22. No more than one observer should be required on a vessel even if marine mammal observers are also required.

Response: Marine mammal observers are also considered to be natural resource observers. These observers will be used in special cases to collect information where the mandatory observer program is not able to respond. No more than one observer, whether a marine mammal observer or an industry observer, will be required.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendments 13 and 18. The Assistant Administrator found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council for Amendments 13 and 18. A copy of the EA/RIR/FRFA may be obtained from the Regional Director at the address above.

The Under Secretary concluded that this rule would have significant effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Regional Director at the address above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Other Matters

The Assistant Administrator for Fisheries finds for good cause that this rule should be made effective immediately. The industry has been well-advised that this program is intended to become effective as soon as possible after the beginning of 1990. The waiving of the cooling off period is not expected to be burdensome to the industry because NOAA recognizes some start-up problems may occur when the observer program is implemented. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the observer plan. Observer data needed for inseason management decisions and for future management planning and decision-making must be obtained at the beginning of the fishing year. If this rule is delayed, information will be foregone for the length of the delay. This information pertains to (1) incidental catches of prohibited species, including crab and Pacific halibut, in the groundfish fisheries, (2) incidental catches of groundfish species in the target groundfish fisheries, and (3) interactions between the groundfish fisheries and marine mammals and birds. Some of the groundfish fisheries may last as little as three or four weeks after the fishing year starts on January 1, 1990. If observers are not deployed during these fisheries, information will not be available to make informed management decisions in 1991. In addition, the Assistant Administrator is mindful of the decline of Stellar sea lion populations in the waters off Alaska. The observer coverage required under this rule will provide important information concerning the effects of fishing for groundfish on these populations. In particular, immediate deployment of observers will provide timely and more complete information on interactions during the winter fisheries. Therefore, the Assistant Administrator has determined that it is impractical and contrary to the public interest to delay for 30 days the effective date, of this rulemaking under provisions of section 553(d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Dated: February 6, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 672.2 is amended by adding the definition of "length overall" in alphabetical order as follow:

§ 672.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

* * * * *

3. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject

to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements.*—(1) *Compliance by vessels.* An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities.* (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) One or more life rafts capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish and fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 675.2 is amended by adding the definition of "length overall" in alphabetical order as follow:

§ 675.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders,

outboard motor brackets, and similar fittings or attachments.

* * * * *

6. Section 675.25 is revised to read as follows:

§ 675.25 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements*—(1) *Compliance by vessels.* An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities*—(1) an operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) One or more life rafts capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish and fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provde all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

[FR Doc. 90-3147 Filed 2-7-90; 11:36 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 90-002]

Horse Quarantine Facility Standards; Collection of Fees at Animal Quarantine Facilities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for our proposal to amend the regulations concerning privately operated quarantine facilities for horses being imported into the United States, and concerning the collection of fees at privately operated animal quarantine facilities. This extension will provide interested persons with additional time to prepare comments on the proposed rule.

DATES: Consideration will be given only to written comments on Docket No. 85-061 received on or before May 14, 1990.

ADDRESSES: To help ensure that your written 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 No. 85-061 Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION: On September 6, 1989, we published in the **Federal Register** (54 FR 36986-36996, Docket No. 85-061) a proposed rule that would amend the regulations concerning quarantine facilities for animals imported into the United States. The proposed rule would (1) establish requirements for approval of permanent, privately operated quarantine facilities for horses; (2) add new requirements to those already in the regulations for approval of temporary, privately operated quarantine facilities for horses; and (3) specify that the government shall collect payment from each privately operated animal quarantine facility for services the government provides at that facility.

Comments on the proposed rule were required to be received on or before November 6, 1989. During the comment period, we received two requests that we extend that period. In response, we extended the comment period, so that we could consider all written comments received on or before January 5 1990.

Shortly before the extended comment period closed, we received a request from the American Horse Council (AHC) that we further extend the period for accepting comments. The AHC stated that an extended comment period would allow time for interested parties to conduct a study of existing quarantine facilities, both Federal and private, in order to determine whether a need for private quarantine facilities exists and, if so, what regulations governing their operations would be most appropriate.

In response to this request, we are reopening and extending the comment period for Docket No. 85-061 for an additional 90 days from the date of publication of this notice. This will allow time for the requestor and other interested persons to gather information they believe is necessary to comment on the proposed rule. We will consider all written comments received from September 6, 1989, the date of publication of the proposed rule, through May 14, 1990.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51 and 371.2(d).

Done in Washington, DC, this 6th day of February 1990.

James W. Glosser,

Administrator, Animal and Plant Inspection Service.

[FR Doc. 90-3172 Filed 2-9-90; 8:45 am]

BILLING CODE 8410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-90-2]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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 April 16, 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. 26104, 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 (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on February 5, 1990.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26104
Petitioner: James J. Cain
Regulations Affected: 14 CFR 61.155(d)
Description of Petition: To allow an applicant for the airline transport pilot certificate to credit time acquired in two-place aircraft as a military nonpilot airborne crewmember in the same 1:3 ratio (1 hour of credit for 3 hours of flight time) as is allowed for flight engineers
Petitioner's Reason for the Request: The petitioner believes the aeronautical experience gained by military nonpilot airborne crewmembers, i.e., radar intercept officers, bombardier/navigators, and other "back-seaters" in two-place aircraft is the same as, or closely aligned to, the experience of a second-in-command/first officer.

[FR Doc. 90-3211 Filed 2-9-90; 8:45 am]
BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 89-ASW-58]

Airworthiness Directives; Robinson Helicopter Company, Model R22 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require removal and replacement of the carburetor air box latches on Robinson Helicopter Company (RHC) Model R22 series helicopters. This proposed AD is prompted by reports of carburetor air box latches coming loose in flight and resulting in air filter migration. This condition, if not corrected, could result in the air filter blocking the carburetor inlet causing loss of engine power, and subsequent loss of the helicopter.

DATES: Comments must be received on or before March 29, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, Fort Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas. Comments must be marked: Docket No. 89-ASW-58. Comments may be inspected at the above location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The applicable AD-related information may be obtained from Robinson Helicopter Company, 24747 Crenshaw Boulevard, Torrance, California 90505, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Dulin, Aerospace Engineer, FAA, ANM-143L, Northwest Mountain Region, Transport Airplane Directorate, Aircraft Certification Service, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5261.

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 FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of 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 Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, 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 postcard on which the following statement is made: Comments to Docket No. 89-ASW-58. The postcard will be date/time stamped and returned to the commenter.

There have been four reports of carburetor air box latches coming loose in flight and allowing the air filter to become dislodged or detached. The first occurrence, during a ferry flight, resulted in a lost air filter. The second occurrence reported by the same operator, resulted in the filter becoming dislodged or detached. These two occurrences prompted the manufacturer to add safety wire to the latches. The third occurence resulted in engine stoppage in hover flight due to air filter migration that obstructed the carburetor air inlet. The fourth occurrence resulted in severe loss of power during an approach to land; upon inspection, the air filter was found protruding from the housing. The third and fourth occurrences were on the same helicopter with the safety wire installed. RHC has issued Service Bulletin No. 61, dated July 28, 1989, that provides instructions for removing the three carburetor air box latches and replacing them with four bolts, as in the original approved type design.

A detached air filter could damage other parts of the aircraft, and a dislodged air filter could partially block the carburetor inlet causing an in-flight power loss. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is proposed which would require mandatory replacement of carburetor air box latches with the bolted design.

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.

The FAA has determined that this proposed regulation involves approximately 77 helicopters at an approximate cost of 1 man-hour at $40 per man-hour plus $6.00 for parts per helicopter, resulting in a total cost of $46 per helicopter and a total estimated cost of $3,542. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) 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.

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 11.89.

§ 39.13 [Amended]

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

Robinson Helicopter Company (RHC): Applies to all Model R22 series helicopters, certificated in any category, equipped with carburetor air box latches.

Compliance required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent carburetor air box latches from coming loose in flight, which could result in power loss in critical maneuvers close to the ground, accomplish the following:

(a) Remove the three carburetor air box latches and replace with four bolts in accordance with the following:

(1) Open the air box and remove the filter element.

(2) Remove the air box from the helicopter.

(3) Drill out the four rivets in the cover holding 0.25 inch diameter spacers and enlarge the holes to 0.191 inch diameter. Discard the spacers.

(4) Close the cover, and using the holes in the cover as guides, drill four matching holes through the upper box in line with the holes in the cover.

(5) Open the air box and drill out all the rivets holding the latches to the cover. Discard the latches and angles. Clean the drilling chips from box.

(6) Reinstall the air box to the helicopter.

(7) Install the filter element and secure the cover using four AN3–35A bolts, AN960–10L washers, AN970–3 washers, and NAS679A3 nuts.

Note: Refer to Figure 1 for accomplishing the instructions required by paragraph (a).

BILLING CODE 4910–13–M

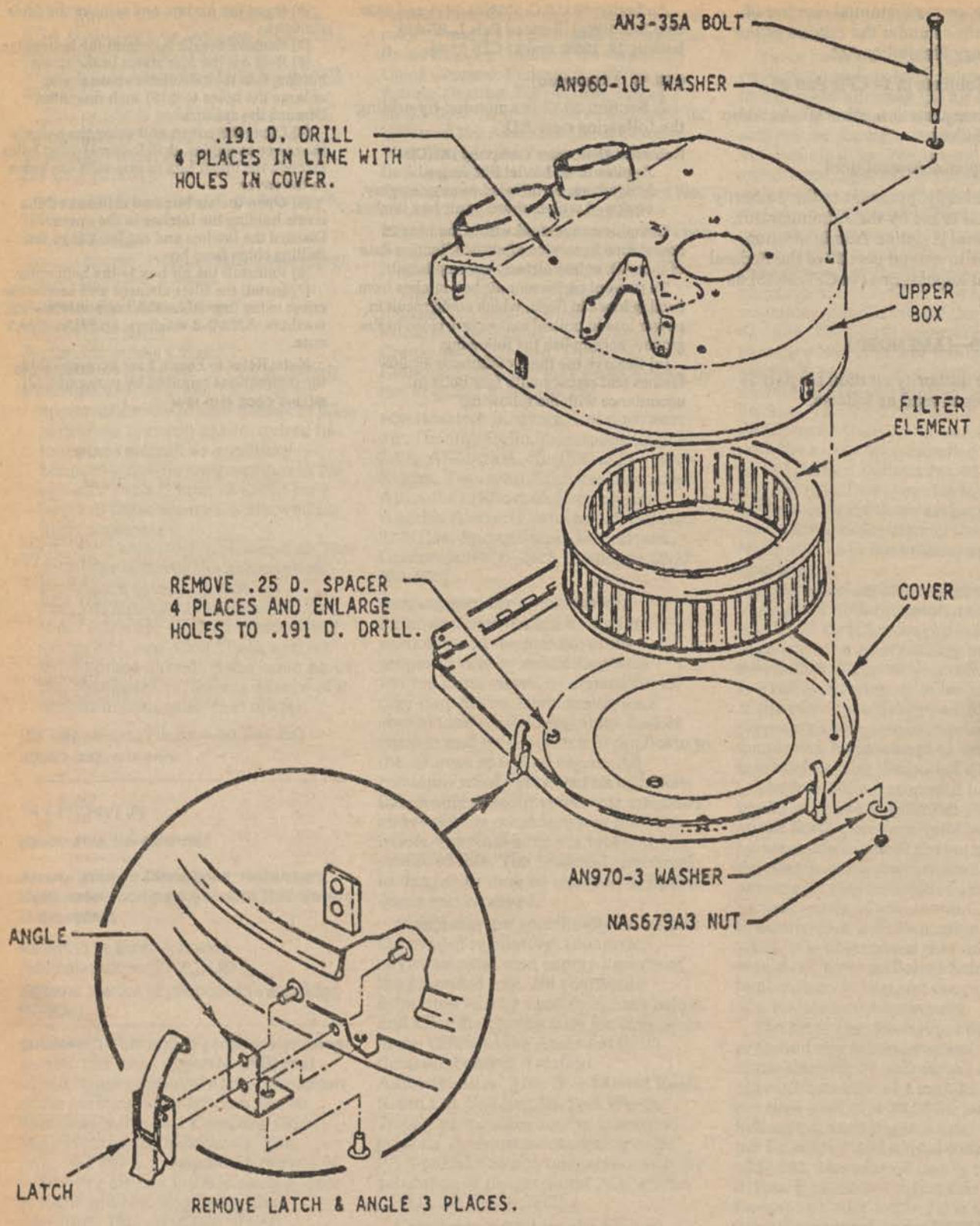


FIGURE 1

BILLING CODE 4910-13-C

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425.

Note: Robinson Helicopter Company Service Bulletin #61, dated July 28, 1989, pertains to this AD.

Issued in Fort Worth, Texas, on February 2, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 90-3209 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR PARTS 1 and 602

[IL-53-89]

RIN 1545-AM91

Requirements For Investment To Qualify Under Section 936 (d)(4) as Investments in Qualified Caribbean Basin Countries; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the requirements that must be met for an investment by a possessions corporation in a financial institution in Puerto Rico to qualify as qualified possession source investment income. Changes to the applicable tax law were made by the Tax Reform Act of 1986.

DATES: The public hearing will be held on Monday, March 19, 1990, beginning at 10 a.m. Outlines of oral comments must be delivered by Friday, March 9, 1990.

ADDRESSES: The public hearing will be held in the Internal Revenue Building, Fourth Floor, Room 4702, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IL-53-89), Room 4429, Washington, DC. 20044.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 936 (d)(4) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Friday, September 22, 1989, at page 39001 (54 FR 39001).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, March 9, 1990, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-3161 Filed 2-9-90; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Rules of Procedure

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Proposed Rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") hereby publishes proposed rules revising its present rules of procedure. The Commission's current rules of procedure were adopted in 1979, and have been amended since then only in a few particulars. The past ten years have provided the Commission and Commission judges with a wealth of experience in the practical operation of the rules. In the main, the rules have operated well to facilitate "the just, speedy, and inexpensive determination of all proceedings" before the Commission (29 CFR 2700.1(c)). The Commission has determined, however, that certain procedural areas require revision in light of experience. The proposed rules are intended to carry forward the present rules' tradition of simple, easily understood, and efficient procedure in an administrative setting.

DATES: Written comments must be submitted on or before May 14, 1990.

ADDRESSES: Comments may be mailed to L. Joseph Ferrara, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara at 202-653-5610, (202-708-9300 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Discussion of Proposed Rules

A. General Discussion

The Commission is an independent adjudicatory agency that provides trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1982) (the "Mine Act"). The Commission's rules of procedure govern practice and procedure in Commission proceedings at both the trial and review level.

The Commission's present rules of procedure were adopted in June 1979. *See* 44 FR 38227 (June 29, 1979). The rules have been revised in only a few particulars since that time. The Commission determined that a reexamination of the rules was warranted in light of ten years' practical experience with their operation. In drafting the proposed revisions, the Commission considered both its own experience with the rules and also various suggestions of Commission administrative law judges, who preside over the Commission's trial proceedings.

This examination indicated that certain rules could be improved by amendment, that certain problems not foreseen in 1979 needed to be addressed, and that case law under the Mine Act had to be taken into account. These revisions were the subject of a series of open Commission meetings and discussions. In general, the Commission is adapting its rules to present needs in light of experience and changing practical and legal circumstances.

In the proposed rules, the Commission has provided clarification where needed. For example, the procedure for contesting citations or orders pursuant to section 105(d) of the Mine Act, 30

U.S.C. 815(d), has been explained in more detail. *See* proposed §§ 2700.20–2700.23. The Commission has also expanded the treatment of certain procedural topics, for example, pretrial discovery. *See* proposed §§ 2700.56–2700.59. Certain areas are not specifically addressed in the existing rules but which have caused procedural problems in actual practice are now addressed. *See, e.g.*, proposed § 2700.67 (substitution of judges).

Among the more significant changes, the Commission has both clarified and expanded its present treatment of intervention at both the trial and review levels. *See* proposed §§ 2700.4(b) and 2700.73. Related to that topic, the Commission also has provided for amicus curiae participation at the trial and review levels. *See* proposed §§ 2700.4(c) and 2700.74.

Based on its experience, the Commission is expanding the time available in review proceedings for filing briefs from the present 20 days to 30 days. *See* proposed § 2700.75. The Commission has determined that this is a more realistic time limit and, in light of the additional time provided, is making clear that requests for extension of time for filing briefs are not favored and will be granted only for good cause shown. The Commission also proposes a rule dealing with oral argument before it, and requires the filing of a separate written motion. *See* proposed § 2700.77. The Commission also proposes to clarify and expand the rules dealing with interlocutory review, disciplinary referral, and ex parte communications. *See* proposed §§ 2700.76, 2700.80, and 2700.82.

Persons practicing before the Commission are advised that the Commission proposes to delete from present § 2700.8(b) the five-day "grace period" for responding to a document served by mail (see proposed § 2700.8), because it has produced uncertainty as to when a responsive filing is due. In connection with this step, the Commission has examined its rules to ensure that periods allowed for response are adequate and has revised those periods as necessary to achieve that end.

A section-by-section explanation of the more significant changes is presented below. Notice and comment rulemaking under the Administrative Procedure Act does not apply to rules of agency procedure such as these proposed rules. *See* 5 U.S.C. 553(b)(3)(A). However, the Commission recognizes the importance of this first general revision of its procedural rules and welcomes the responses and suggestions of the Commission bar, the mining community, and any other interested person. Accordingly, public comment is invited and will be considered prior to final Commission action on the proposed rules.

B. Section-by-Section Analysis

Set forth below is an analysis of some of the more significant changes to the procedural rules proposed by the Commission. Proposed rules that merely simplify or clarify an existing rule are not discussed. Because this discussion is limited to significant changes, readers are advised to review carefully the proposed rules and not rely exclusively on this summary of changes.

General Provisions

Section 2700.1 Applicability of Other Rules

Paragraph (b) adds specific authorization for the Commission to be guided by the Federal Rules of Appellate Procedure when considering procedural questions not covered by the Mine Act, these rules, or the Administrative Procedure Act.

Section 2700.2 Definitions

The proposal deletes the definition of "representatives of miners." The definition in the present rule merely repeats the definition promulgated by the Secretary at 30 CFR 40.1(b). The Commission believes that repetition of this definition is not necessary to these procedural rules.

Section 2700.3 Who May Practice

The proposal adds provisions on the entry of appearance and withdrawal of appearance of a representative of a party.

Section 2700.4 Parties, Intervenors, and Amicus Curiae

Under the proposed rule, the Secretary of Labor will no longer be permitted to intervene as a matter of right in proceedings instituted under 105(c)(3), 30 U.S.C. 815(c)(3). The Commission amended its procedural rule at § 2700.40(b) in *John A. Gilbert* v. *Sandy Fork Mining Co.*, 9 FMSHRC 1327 (August 1987). *See* 52 FR 44882 (November 23, 1987). Since under revised § 2700.40(b) a private complainant is barred from bringing a complaint under section 105(c)(3) of the Mine Act until such time as the Secretary has determined that no violation of section 105(c) occurred, the Commission believes that the Secretary should no longer be permitted to intervene as a matter of right in such proceedings.

The proposed rule continues to recognize that miners and their representatives are permitted to intervene as a matter of right in Commission proceedings. The proposed rule makes clear, at paragraph (b)(1), that such intervention after the start of the hearing shall be upon just terms and for good cause shown.

The proposed rule specifies at paragraph (b)(2) that other persons who wish to intervene must demonstrate an interest relating to the property or events involved in the proceeding and show that such interest is not otherwise adequately represented in order to intervene in a proceeding before an administrative law judge ("Judge"). The proposal also specifically authorizes participation as amicus curiae at the hearing stage.

Section 2700.5 General Requirements for Pleadings

Under paragraph (d), the filing of a pleading or other document with the Commission is completed upon receipt by the Commission rather than upon mailing. In view of the Commission's extension of the time periods allowed for various filings, additional time is not now provided to file a response to a document served upon a party by mail. This rule and other procedural rules recognize the practice of using courier services to serve and file documents.

Section 2700.6 Signing of Documents

Paragraph (b) incorporates the provisions of Rule 11 of the Federal Rules of Civil Procedure relating to the certification made by anyone who signs a document in a representative capacity. The proposal does not incorporate the provisions of Rule 11 concerning sanctions. *See Rushton Mining Company*, 11 FMSHRC 759 (May 1989).

Section 2700.7 Service

The provision in the existing rules providing that specified documents are to be posted on mine bulletin boards is deleted. Section 109 of the Mine Act, 30 U.S.C. 819, sets forth the posting required under the Mine Act. The Secretary is responsible for regulating and enforcing posting requirements. In addition, the deleted posting provision does not directly relate to Commission practice and procedure.

Section 2700.9 Extension of Time

The proposed rule eliminates the requirement that motions for extension of time be filed no later than five days before the expiration of the time allowed for filing a document. It is sufficient if the motion is filed prior to such expiration date.

Section 2700.10 Motions

Written motions are required to be filed separately from other documents so that such motions can be immediately identified.

Contests of Citations and Orders

Section 2700.20 Notice of Contest of a Citation or Order

The proposed rule replaces the existing rule, which simply repeats the language of section 105(d) of the Mine Act, 30 U.S.C. 815(d), with a provision that delineates who may contest a citation or order, the modification of a citation or order and the reasonableness of abatement time.

Section 2700.21 Effects of Failure to File Notice of Contest

The proposed rule states that the failure to file a notice of contest does not preclude the mine operator from challenging in a penalty proceeding the fact of violation or any special findings contained in a citation or order including that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard. The proposal conforms with existing practice. *See Quinland Coals, Inc.*, 9 FMSHRC 1614 (September 1987).

Contests of Proposed Penalties

Section 2700.26 Notice of Contest of a Proposed Penalty Assessment

The proposed rule changes the term "notification of proposed assessment of penalty" to "proposed penalty assessment" to reflect the terminology used by the Secretary. *See* 30 CFR 100.7 and 100.8. This proposed penalty assessment includes the "blue card" that the mine operator or other person against whom a penalty is proposed uses to notify the Secretary that it wishes to contest a proposed penalty. The proposed rule deletes the requirements relating to posting on the mine bulletin board and sending a copy to the representatives of miners. As discussed above with respect to service of documents, the posting requirements are set forth in section 109 of the Mine Act, 30 U.S.C. 819, and the Secretary is responsible for regulating and enforcing posting requirements. Mailing a copy to any known representative of miners is not necessary since formal proceedings before the Commission are not initiated until the Secretary files a petition for assessment of penalty under § 2700.28.

Section 2700.28 Filing of Petition for Assessment of Penalty With the Commission

The proposed rule changes the term "proposal for penalty" to "petition for assessment of penalty" to reflect the terminology used by the Secretary. The posting requirements are deleted from the proposed rule for the reasons set forth above. Because service on the representative of miners is covered by § 2700.7, the service requirement is dropped from this section. The proposed rule includes a new requirement that the Secretary advise the party against whom a penalty is filed that it has 30 days to file an answer. A number of mine operators have failed to respond to the petition for assessment of penalty in the false belief that the "blue card" referred to in § 2700.26 constituted its answer.

Complaint of Discharge, Discrimination or Interference

Section 2700.40 Who May File

The term "complaint of discharge, discrimination or interference" contained in the existing rules is changed to "discrimination complaint." The term "discrimination" encompasses discharges and other interference with protected rights under section 105(c) of the Mine Act, 30 U.S.C. 815(c).

Section 2700.41 When to File

The proposed rule requires that discrimination complaints filed under section 105(c)(3) of the Mine Act, 30 U.S.C. 815(c)(3), be filed within 30 days after receipt of the written determination by the Secretary that no violation of section 105(c)(1) has occurred. Under the present rule there is no time limit on filing such complaints, although the Mine Act provides for a 30-day period for such filing.

Section 2700.44 Petition for Assessment of Penalty in Discrimination Cases

This new section combines § 2700.42(b) of the existing rule with a new provision. The new provision in paragraph (b) requires the Judge who sustains a discrimination complaint brought under section 105(c)(3), 30 U.S.C. 815(c)(3), to notify the Secretary of his decision and requires the Secretary to file a petition for assessment of penalty with the Commission within 45 days.

Section 2700.45 Temporary Reinstatement Proceedings

The proposed rule includes a new service of pleadings provision in paragraph (a). In addition, paragraph (e) extends to 7 days the time within which the Judge must issue an order granting or denying the application following the close of the hearing. Paragraph (g) is revised to eliminate the provision authorizing the Judge to issue an order to show cause why an order of reinstatement should not be dissolved if the Secretary fails to file a discrimination complaint within 90 days after the order of reinstatement has been issued. The Secretary is required to notify a complainant of his determination whether a violation of section 105(c) of the Mine Act has occurred within 90 days of receipt of a complaint. The Commission does not believe that an order to show cause should be issued solely because the Secretary fails to meet this deadline. *John A. Gilbert* v. *Sandy Fork Mining Co.*, 9 FMSHRC 1327 (August 1987).

Application for Temporary Relief

Section 2700.46 Procedure

Paragraph (a) was revised to conform to the language of section 105(b)(2) of the Mine Act, 30 U.S.C. 815(b)(2). In addition, in paragraph (b) a party opposing the application is granted 10 days to file a statement of opposition.

Hearings

Section 2700.56 Discovery

Paragraph (c) provides that discovery shall be initiated within 30 days after an answer to a notice of contest, a petition for assessment of penalty, or a complaint under section 105(c) or 111 of the Act has been filed. Paragraph (d) provides that discovery shall be completed within 60 days after its initiation.

Section 2700.57 Depositions

Paragraph (a) makes clear that depositions may be taken by a party without leave of the Judge subject to the time limits set forth in § 2700.56.

Section 2700.58 Interrogatories, Requests for Admissions, and Production of Documents

Under paragraphs (a), (b), and (c) a party may serve written interrogatories, requests for admissions, request for production of documents, and requests for entry or inspection upon another party without leave of the Judge subject to the time limits set forth in § 2700.56. Answers to such requests must be within 25 days of service unless the proponent of the interrogatories agrees to a longer time. Objections to such requests must be stated in the answer. Under paragraph (b) of the proposal, any matter admitted pursuant to a

request for admissions is conclusively established for the purpose of the pending proceeding unless the Judge, on motion, permits withdrawal or amendment of the admission.

Section 2700.59 Failure to Cooperate in Discovery; Sanctions

Under the proposed rule, the failure of any person, including a party, to cooperate in discovery may result in sanctions. The party seeking discovery may file a motion with the Judge requesting an order compelling discovery. Upon failure to comply with an order compelling discovery, the Judge may order sanctions as are just and appropriate. For good cause shown the Judge may excuse the party objecting from complying with the request.

Section 2700.61 Name of Miner Informants

Under presently effective 29 CFR 2700.59 Names of miner witnesses and informants, "[a] Judge shall not, until 2 days before a hearing, disclose or order a person to disclose to an operator or his agent the name of a miner who is expected by the Judge to testify or whom a party expects, to summon or call as a witness." That prohibition would be deleted under the proposed rule. A party may file an objection to a discovery request seeking the names of miner witnesses. The provision prohibiting the disclosure of the name of a miner informant remains unchanged.

Section 2700.65 Summary Disposition of Proceedings

Under paragraph (a) show cause orders for failure of a party to comply with an order of a Judge or these rules shall be mailed by registered or certified mail, return receipt requested. This codifies existing practice. Under subsection (b), if a party fails to attend a scheduled hearing, the Judge may find the party in default or dismiss the proceeding without issuing an order to show cause.

Section 2700.67 Substitution of a Judge

This proposed rule codifies the Commission's practice for the substitution of a Judge should a Judge become unavailable to the Commission. Under paragraph (b), if the substitution follows a hearing, an objection to the substitute Judge assigned to render a decision must be filed within 10 days after receipt of the Judge's notice, or the objection shall be deemed to be waived. A substitute Judge may render a decision based upon the existing record, provided the parties are notified of his intent and are given an opportunity to object.

Review by Commission

Section 2700.70 Petitions for Discretionary Review

Paragraph (b) makes clear that review by the Commission shall be granted only by affirmative vote of not less than two of the Commissioners present and voting. Paragraph (f) makes clear that if a petition is granted, review shall be limited to the issues raised by the petition, unless the Commission directs review of additional issues pursuant to § 2700.71. *See* section 113(d)(2)(A)(iii) of the Mine Act, 30 U.S.C. 823(d)(2)(A)(iii).

Section 2700.73 Procedure for Intervention

This proposed rule concerns a request for intervention by a person after the Commission has directed a case for review. A motion for intervention must be filed not later than 30 days after the Commission's direction for review. Intervention will be a matter of the sound discretion of the Commission. The person requesting intervention must address a number of matters, including a showing that the movant has a legally protectible interest directly relating to the property or events subject to the case on review and that the movant should be excused for failing to file for intervention before the Judge. The proposed rule also provides that in denying a motion to intervene, the Commission may alternatively permit the movant to participate in the proceeding as an amicus curiae.

Section 2700.74 Procedure for Participation as Amicus Curiae

The proposed rule concerns a request by any person to participate as an amicus curiae after the Commission has directed a case for review. A motion shall be filed not later than 30 days after the Commission's direction for review. Participation as amicus curiae before the Commission shall be by the discretion of the Commission. The person requesting to participate as an amicus curiae shall set forth the interest of the movant and show that the granting of the motion will not unduly delay the proceeding or prejudice any party.

Section 2700.75 Briefs

Under paragraph (a), the Commission has increased the time for filing opening and response briefs. Thus, the petitioner shall file his opening brief within 30 days after the Commission grants a petition for discretionary review. If the petitioner desires, he may notify the Commission and all other parties within the 30-day period that his petition and any supporting memorandum are to constitute his brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review. Furthermore, the Commission's proposal provides that where the Commission has granted a petition for discretionary review, the petitioner may file a reply brief within 20 days after the service of the response briefs, and in cases where the Commission has directed review on its own motion, a party may file a reply brief within 20 days after service of the opposing party's main brief. We point out, however, that under § 2700.5 of the proposal, additional time is not provided to file a response to a document served upon a party by mail as is provided under the Commission's rules now in effect.

Under paragraph (c), there are some new page limitations. It is proposed that reply briefs shall not exceed 15 pages. In addition, a brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if some other position is taken, such brief shall not exceed 25 pages.

Under paragraph (d) a motion for an extension of time to file a brief is not favored and will not be granted except for good cause shown in light of the increased time periods for filing. Any such motion for extension of time will be timely as long as it is filed within the time limit prescribed for filing of the brief and coincides with proposed revision § 2700.9. Presently a request for an extension of time is to be filed 5 days before the expiration of the time allowed for the filing or serving of the document. Under paragraph (e) of the proposal, if a petitioner fails to timely file a brief or to designate the petition as his brief, the direction for review may be vacated.

Section 2700.76 Interlocutory Review

Under the proposed rule, a party seeking interlocutory review must first file a motion to that effect with the Judge. The Judge is required to either certify his interlocutory ruling or deny the motion. If the Judge denies a party's motion for certification, the party must file with the Commission a petition for interlocutory review within 30 days of the Judge's denial of such motion for certification. In either case, interlocutory review may be granted by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission.

Under paragraph (c), when the Commission grants interlocutory review, unless otherwise ordered, the parties shall file simultaneous briefs not to exceed 25 pages within 20 days of the order granting interlocutory review.

Section 2700.77 Oral Argument

Under the proposed rule, a party requesting oral argument shall do so by separate motion at the time that it files a petition for review or brief. This proposed revision coincides with proposed § 2700.10.

Section 2700.78 Reconsideration

Under the proposal, a petition for reconsideration must be filed with the Commission within 15 days after a decision or order of the Commission, and a response must be filed within 10 days of service of the petition.

Miscellaneous

Section 2700.80 Standards of Conduct; Disciplinary Proceedings

Under paragraph (c), disciplinary proceedings shall be instituted in the form of a Disciplinary Referral to the Commission from a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission. The Commission shall then conduct an inquiry concerning the Disciplinary Referral. Whenever, as a result of its inquiry, the Commission by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission determines that the circumstances warrant a hearing, the Commission shall transmit the matter to the Chief Administrative Law Judge for assignment to a Judge (other than the referring Judge) for hearing and decision.

Under paragraph (e) of the proposal, a party aggrieved by a Judge's order to remove a representative of a party for disruptive conduct may appeal by requesting interlocutory review pursuant to § 2700.76 or, alternatively, may assign the Judge's ruling as error in a petition for discretionary review.

Section 2700.82 Ex Parte Communications

Under paragraph (a) "ex parte communication" and "merits of a case" are defined. Under paragraph (c)(2), all ex parte communications, even those not prohibited, will be placed on the public record of the proceeding.

Public Comment

The Commission values any comments that the public may have on these matters. Public comment is accordingly invited. Comments may be mailed to the Commission's General Counsel at the address previously stated. It is requested that comments be filed no later than May 14, 1990.

List of Subjects in 29 CFR Part 2700

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

For the reasons set out in the preamble, it is proposed to revise 29 CFR part 2700 as follows:

1. 29 CFR part 2700 is revised to read as follows:

PART 2700—PROCEDURAL RULES

General Provisions

Sec.

Contest of Citations and Orders

Contests of Proposed Penalties

Complaint for Compensation

Complaint of Discharge, Discrimination or Interference

Application for Temporary Relief

Hearings

Review by the Commission

Miscellaneous

Authority: 30 U.S.C. 815 and 823.

General Provisions

§ 2700.1 Scope; applicability of other rules; construction.

(a) *Scope.* This part sets forth rules applicable to proceedings before the Federal Mine Safety and Health Review Commission and its Administrative Law Judges.

(b) *Applicability of other rules.* On any procedural question not regulated by the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. ("the Act"), these Procedural Rules, or the Administrative Procedure Act (particularly 5 U.S.C. 554 and 556), the Commission and its Judges shall be

guided so far as practicable by the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure.

(c) *Construction.* These rules shall be construed to secure the just, speedy and inexpensive determination of all proceedings, and to encourage the participation of miners and their representatives. Wherever the masculine gender is used in these rules, the feminine gender is also implied.

§ 2700.2 Definitions.

For purposes of this part, the definitions contained in section 3 of the Act, 30 U.S.C. 802, apply.

§ 2700.3 Who may practice.

(a) *Attorneys.* Attorneys admitted to practice before the highest court of any State, Territory, District, Commonwealth or possession of the United States are permitted to practice before the Commission.

(b) *Other persons.* A person who is not authorized to practice before the Commission as an attorney under paragraph (a) of this section may practice before the Commission as a representative of a party if he is:

(1) A party;

(2) A representative of miners;

(3) An owner, partner, officer or employee of a party when the party is a labor organization, an association, a partnership, a corporation, other business entity, or a political subdivision;

(4) Any other person with the permission of the presiding judge or the Commission.

(c) *Entry of appearance.* A representative of a party or intervenor shall enter an appearance by signing the first document filed on behalf of the party or intervenor; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

(d) Withdrawal of appearance. Any representative of a party desiring to withdraw his appearance shall file a motion with the Commission or Judge. The motion to withdraw may, in the discretion of the Commission or Judge, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

§ 2700.4 Parties, intervenors, and amicus curiae.

(a) *Party status.* A person, including the Secretary and an operator, who is named as a party or who is permitted to intervene, is a party. A miner, applicant for employment, or representative of a miner who has filed a complaint with the Secretary or Commission under sections 105(c)(3) or 111 of the Act, 30 U.S.C. 815(c)(3) and 821, and an affected miner or his representative who has become a party in accordance with paragraph (b) of this section, are parties. In a proceeding instituted by the Secretary under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), the complainant on whose behalf the Secretary has filed the complaint is a party and may present additional evidence on his own behalf.

(b) *Intervention.*—(1) *Intervention by affected miners and their representatives.* Before a case has been assigned to a Judge, affected miners or their representatives shall be permitted to intervene upon filing a written notice of intervention with the Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., Sixth Floor, Washington, DC 20006. If the case has been assigned to a Judge, the notice of intervention shall be filed with the Judge. The Commission or the Judge shall mail forthwith a copy of the notice to all parties. After the start of the hearing, affected miners or their representatives may intervene upon just terms and for good cause shown.

(2) *Intervention by other persons.* A motion for leave to intervene may be filed by other persons at any time before a hearing on the merits. The motion shall set forth the interest of the movant relating to the property or events that are the subject of the proceeding and show that such interest is not otherwise adequately represented by the parties already involved in the proceeding and that intervention will not unduly delay or prejudice the adjudication of the issues. Such intervention is not a matter of right but of the sound discretion of the Judge. In denying a motion to intervene, the Judge may alternatively permit the movant to participate in the proceeding as an amicus curiae.

(c) *Procedure for participation as amicus curiae.* Any person may move to participate as an amicus curiae any time before a hearing on the merits. Participation as amicus curiae before the Commission at the hearing stage shall not be a matter of right but of the sound discretion of the Judge. A motion for amicus curiae participation shall set forth the interest of the movant and show that the granting of the motion will not unduly delay or prejudice the adjudication of the issues. If the Judge permits amicus curiae participation, the Judge's order shall specify the time within which such amicus curiae memorandum, brief, or other pleading must be filed and the time within which a reply may be made. The movant may conditionally attach its memorandum, brief, or other pleading to its motion for amicus curiae participation.

§ 2700.5 General requirements for pleadings and other documents.

(a) *Jurisdiction.* A proposal for a penalty under section 110, 30 U.S.C. 820; an answer to a notice of contest of a citation or withdrawal order issued under section 104, 30 U.S.C. 814; an answer to a notice of contest of an order issued under section 107, 30 U.S.C. 817; a complaint issued under sections 105(c) or 111, 30 U.S.C. 815(c) and 821; and an application for temporary reinstatement under section 105(c)(2), 30 U.S.C. 815(c)(2), shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products which affect commerce. Jurisdictional facts alleged are deemed admitted unless specifically denied in a responsive pleading.

(b) *Where to file.* Until a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., Sixth Floor, Washington, DC 20006. After a Judge has been assigned, and before he issues a decision, documents shall be filed with the Judge at the address set forth on the notice of assignment. Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with § 2700.75. After the Judge has issued his final decision, documents shall be filed with the Commission.

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover pages the filing party by name. All documents shall be dated and shall include the assigned docket number, and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge, and all other parties.

(d) *Manner and date of filing.* Filing may be accomplished by mail, courier service or personal delivery. Filing is completed upon receipt. Additional time is not provided to file a response to a document served upon a party by mail.

(e) *Number of copies.* In cases before a Judge, two copies shall be filed for each docket; in cases before the Commission, seven copies shall be filed; but if the filing party is not represented by a lawyer or other representative, one copy shall be sufficient.

(f) *Size of paper.* Pleadings and other documents shall be 8½ by 11 inches in size.

§ 2700.6 Signing of documents.

When a person who appears in a representative capacity signs a document, that person's signature shall constitute his certificate:

(a) That under the provisions of the law, including these rules and all federal conflict of interest statutes, he is authorized and qualified to represent the particular party in the matter;

(b) That he has read the document; that to the best of his knowledge, information, and belief found after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 2700.7 Service.

(a) *Generally.* A copy of each document filed with the Commission shall be served on all parties. A copy of a notice of contest of a citation or order, a petition for assessment of penalty, a discrimination complaint, a complaint for compensation and an application for temporary relief shall be served upon the representative of miners, if known.

(b) *How to serve.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint of discharge, discrimination or interference, a complaint for compensation, and an application for temporary relief shall be served by personal delivery or by registered or certified mail, return receipt requested. All subsequent documents may be served by personal delivery, courier service or by first class mail. Service by mail or courier service is complete upon mailing. Service by personal delivery is complete upon receipt.

(c) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative.

(d) *Proof of service.* All pleadings or other filed documents shall be accompanied by a statement setting forth the date and manner of service.

§ 2700.8 Computation of time.

In computing any period of time prescribed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed is less than 7 days, intermediate Saturdays, Sundays, and Federal holidays shall be excluded in the computation.

§ 2700.9 Extensions of time.

The time for filing or serving any document may be extended for good cause shown. A request for an extension of time shall be filed before the expiration of the time allowed for the filing or serving of the document.

§ 2700.10 Motion.

(a) An application for an order shall be by motion which, unless made during a hearing, shall be made in writing and shall set forth the relief or order sought.

(b) Written motions shall be filed separately from all other pleadings.

(c) A statement in opposition to a written motion may be filed by any party within 15 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard.

§ 2700.11 Withdrawal of pleading.

A party may withdraw a pleading at any stage of a proceeding with the approval of the Judge or the Commission.

§ 2700.12 Consolidation of proceedings.

The Judge or the Commission may at any time order the consolidation of proceedings that involve similar issues.

Contests of Citations and Orders

§ 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) *Who may contest.* (1) An operator may contest:

(i) A citation or an order issued under section 104 of the Act;

(ii) A modification of a citation or an order issued under section 104 of the Act;

(iii) The reasonableness of the length of abatement time fixed in a citation or an order, or modification thereof, issued under section 104 of the Act.

(2) A miner or representative of miners may contest:

(i) The issuance, modification or termination of any order issued under section 104 of the Act; or

(ii) The reasonableness of the length of abatement time fixed in a citation or modification thereof issued under section 104 of the Act.

(b) *When to contest.* Contests filed pursuant to paragraph (a) of this section shall be filed with the Secretary within 30 days of receipt of the contested citation, order, or modification.

(c) *Notification by the Secretary.* Upon receipt, the Secretary shall immediately advise the Commission of such notice of contest.

(d) *Copy to Commission.* The contesting party shall also file a copy of his notice of contest with the Commission at the time he files with the Secretary.

(e) *Contents of notice of contest.* A notice of contest shall contain a short and plain statement of (1) the party's position with respect to each issue of law and fact that the party contends is pertinent, and (2) the relief requested by the party. A legible copy of the contested citation or order shall be attached to the notice of contest.

(f) *Answer.* Within 15 days after service of a notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.21 Effect of failure to file notice of contest of citation.

An operator's failure to file a notice of contest of a citation or order issued under section 104 of the Act, 30 U.S.C. 814, shall not preclude the operator from challenging, in a penalty proceeding, the fact of violation or any special findings contained in a citation or order including that the violation was of a significant and substantial nature or was caused by the operator's unwarrantable failure to comply with the standard.

§ 2700.22 Notice of contest of imminent danger withdrawal orders under section 107 of the Act.

(a) *When to file.* A notice of contest of a withdrawal order issued under section 107 of the Act, 30 U.S.C. 817, or any modification or termination of the order, shall be filed with the Commission by the contesting party within 30 days of receipt of the order or any modification or termination of the order.

(b) *Contents of notice of contest.* A notice of contest shall contain a short and plain statement of (1) the contesting party's position on each issue of law and fact that the contesting party contends is pertinent, and (2) the relief requested by the contesting party. A legible copy of the contested order shall be attached to the application.

(c) *Answer.* Within 15 days after service of the notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

§ 2700.23 Review of a subsequent citation or order.

(a) Within 30 days of receipt, the contesting party shall file any

subsequent citation or order that modifies or terminates the citation or order under review. The notice of contest under section 105 or section 107 of the Act, 30 U.S.C. 815 and 817, unless withdrawn, shall be deemed to challenge any such subsequent citation or order.

(b) A person who is not a party in a pending proceeding for review of a citation or order may obtain review of a modification or termination of the citation or order by filing a notice of contest under section 105 or section 107. The notice of contest shall be filed within 30 days of receipt of the citation or order that modifies or terminates the citation or order being reviewed.

Contests of Proposed Penalties

§ 2700.25 Proposed penalty assessment.

The Secretary, by certified mail, shall notify the operator or any other person against whom a penalty is proposed of the violation alleged, the amount of the proposed penalty assessment, and that such person shall have 30 days to notify the Secretary that he wishes to contest the proposed penalty assessment.

§ 2700.26 Notice of contest of proposed penalty assessment.

A person has 30 days after receipt of the proposed penalty assessment within which to notify the Secretary that he contests the proposed penalty. The Secretary shall immediately transmit to the Commission the notice of contest.

§ 2700.27 Effect of failure to contest proposed penalty assessment.

If within 30 days from the receipt of the Secretary's proposed penalty assessment, the operator or other person fails to notify the Secretary that he contests the proposed penalty, the Secretary's proposed penalty assessment shall be deemed to be a final order of the Commission not subject to review by the Commission or a court.

§ 2700.28 Filing of petition for assessment of penalty with the Commission.

(a) *When to file.* Within 45 days of receipt of a timely contest of a proposed penalty assessment, the Secretary shall file with the Commission a petition for assessment of penalty.

(b) *Contents.* The petition for assessment of penalty shall list the alleged violations and the proposed penalties. Each violation shall be identified by the number and date of the citation or order involved and the section of the Act or regulations alleged to be violated. The petition for assessment of penalty shall state whether the citation or order involved has been contested and the docket number of any contest. The petition for assessment of penalty shall advise the party against whom a penalty is filed that he has 30 days to file an answer pursuant to § 2700.29.

(c) *Attachments.* A legible copy of each citation or order for which a penalty is sought shall be attached to the petition for assessment of penalty.

§ 2700.29 Answer.

A party against whom a petition for assessment of penalty is filed shall file and serve an answer within 30 days after service of the petition for assessment of penalty. An answer shall include a short and plain statement responding to each allegation of the petition.

§ 2700.30 Assessment of penalty.

(a) In assessing a penalty the Judge shall determine the amount of penalty in accordance with the six statutory criteria contained in section 110(i) of the Act, 30 U.S.C. 820(i), and incorporate such determination in a written decision. The decision shall contain findings of fact and conclusions of law on each of the statutory criteria and an order requiring that the penalty be paid.

(b) In determining the amount of penalty neither the Judge nor the Commission shall be bound by a penalty proposed by the Secretary or by any offer of settlement made by any party.

§ 2700.31 Penalty settlements.

(a) *General.* No proposed penalty that has been contested before the Commission shall be settled except with the approval of the Commission upon motion.

(b) *Contents of settlement.* A motion to approve a penalty settlement shall include the following information for each violation:

(1) The amount of the penalty proposed by the Secretary;

(2) The amount of the penalty requested in settlement; and

(3) Facts in support of the penalty requested by the parties.

(c) *Order approving settlement.* Any order by the Judge approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final decision of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed.

Complaint for Compensation

§ 2700.35 When to file.

A complaint for compensation under section 111 of the Act, 30 U.S.C. 821, shall be filed within 90 days after the beginning of the period during which the complainants are idled or would have been idled by the order that gives rise to the claim.

§ 2700.36 Contents of complaint.

A complaint for compensation shall include:

(a) A short and plain statement of the facts giving rise to the claim, including the period for which compensation is claimed;

(b) The total amount of the compensation claimed, if known; and

(c) A legible copy of any pertinent order of withdrawal, or information identifying the order.

§ 2700.37 Answer.

Within 30 days after service of a complaint for compensation, the operator shall file an answer responding to each allegation of the complaint.

Complaint of Discharge, Discrimination or Interference

§ 2700.40 Who may file.

(a) *The Secretary.* A discrimination complaint under section 105(c)(2) of the Act, 30 U.S.C. 815(c)(2), shall be filed by the Secretary if, after an investigation conducted pursuant to section 105(c)(2), the Secretary determines that a violation of section 105(c)(1), 30 U.S.C. 815(c)(1), has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination complaint under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), may be filed by the complaining miner, representative of miners, or applicant for employment if the Secretary, upon investigation, determines that the provisions of section 105(c)(1) of the Act, 30 U.S.C. 815(c)(1), have not been violated.

§ 2700.41 When to file.

(a) *The Secretary.* A discrimination complaint shall be filed by the Secretary within 30 days after his written determination that a violation has occurred.

(b) *Miner, representative of miners, or applicant for employment.* A discrimination complaint may be filed by a complaining miner, representative of miners, or applicant for employment no later than 30 days after receipt of a written determination by the Secretary that no violation has occurred.

§ 2700.42 Contents of complaint.

A discrimination complaint shall include a short and plain statement of the facts, setting forth the alleged discharge, discrimination or

interference, and a statement of the relief requested.

§ 2700.43 Answer.

Within 30 days after service of a discrimination complaint the respondent shall file an answer responding to each allegation of the complaint.

§ 2700.44 Petition for assessment of penalty in discrimination cases.

(a) Petition for assessment of penalty in Secretary's complaint. A discrimination complaint filed by the Secretary shall propose a civil penalty of a specific amount for the alleged violation of section 105(c) of the Act. The petition for assessment of penalty shall include a short and plain statement of supporting reasons based on the criteria for penalty assessment set forth in section 110(i) of the Act. 30 U.S.C. 820(i).

(b) Petition for assessment of penalty after sustaining of complaint by miner, representative of miners, or applicant for employment. Immediately upon issuance of a decision by a Judge sustaining a discrimination complaint brought pursuant to section 105(c)(3), 30 U.S.C. 815(c)(3), the Judge shall notify the Secretary in writing of such determination. The Secretary shall file with the Commission a petition for assessment of civil penalty within 45 days of receipt of such notice.

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties either by courier service or personal delivery, or by certified or registered mail, return receipt requested.

(b) *Contents of application.* An application for temporary reinstatement shall state the Secretary's finding that the miner's complaint of discrimination, discharge or interference was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting his finding, a copy of the miner's complaint, and proof of notice to and service on the person against whom relief is sought by the most expeditious means of notice and delivery reasonably available.

(c) *Request for hearing.* Within 10 days following receipt of the Secretary's application for temporary reinstatement, the person against whom relief is sought shall advise the Commission's Chief Administrative Law Judge or his designee, and simultaneously notify the Secretary, whether a hearing on the application is requested. If no hearing is requested, the Judge assigned to the matter shall review immediately the Secretary's application and, if based on the contents thereof the Judge determines that the miner's complaint is not frivolously brought, he shall issue immediately an order of temporary reinstatement. If a hearing on the application is requested, the hearing shall be held within 10 days following receipt of the request for hearing by the Commission's Chief Administrative Law Judge or his designee, unless compelling reasons are shown in an accompanying request for an extension of time.

(d) *Hearing.* The scope of a hearing on an application for temporary reinstatement is limited to a determination as to whether the miner's complaint is frivolously brought. The burden of proof shall be upon the Secretary to establish that the complaint is not frivolously brought. In support of his application for temporary reinstatement the Secretary may limit his presentation to the testimony of the complainant. The respondent shall have an opportunity to cross-examine any witnesses called by the Secretary and may present testimony and documentary evidence in support of its position that the complaint is frivolously brought.

(e) *Order on application.* Within 7 days following the close of a hearing on an application for temporary reinstatement the Judge shall issue an order granting or denying the application. However, in an extraordinary situation the Judge's time for issuing an order may be extended as deemed necessary by the Judge. The Judge's order shall include findings and conclusions supporting the determination as to whether the miner's complaint has been frivolously brought. The parties shall be notified of his determination by the most expeditious means reasonably available. Service of the order granting or denying the application shall be by certified or registered mail, return receipt requested.

(f) *Review of order.* Review by the Commission of a Judge's order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition for review with supporting arguments within 5 days following receipt of the Judge's order. The opposing party simultaneously shall be notified and served. The filing of a petition for review shall not stay the effect of the Judge's order unless the Commission directs otherwise. Any response shall be filed within 5 days following receipt of a petition. The Commission's ruling on a petition for review shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In an extraordinary situation the Commission's time for decision may be extended.

(g) *Dissolution of order.* If, following an order of temporary reinstatement, the Secretary determines that the provisions of section 105(c)(1), 30 U.S.C. 815(c)(1), have not been violated, the Judge shall be so notified and shall enter an order dissolving the order of reinstatement. An order dissolving the order of reinstatement shall not bar the filing of an action by the miner in his own behalf under section 105(c)(3) of the Act, 30 U.S.C. 815(c)(3), and § 2700.40(b) of these rules.

Application for Temporary Relief

§ 2700.46 Procedure.

(a) *When to file.* As provided in section 105(b)(2) of the Act, 30 U.S.C. 815(b)(2), an application for temporary relief from any modification or termination of any order or from any order issued under section 104 of the Act, 30 U.S.C. 814, may be filed at any time before such order becomes final. No temporary relief shall be granted with respect to a citation issued under sections 104(a) or (f) of the Act. 30 U.S.C. 814 (a) and (f).

(b) *Statements in opposition.* Any party opposing the application shall file a statement in opposition within 10 days after receipt of the application.

(c) *Prior hearing required.* Temporary relief shall not be granted prior to a hearing on such application.

§ 2700.47 Contents of application.

(a) An application for temporary relief shall contain:

(1) A statement of the specific relief requested;

(2) A showing of substantial likelihood that the findings and decision of the Judge or the Commission will be favorable to the applicant; and

(3) A showing that such relief will not adversely affect the health and safety of miners in the affected mine.

(b) An application for temporary relief may be supported by affidavits or other evidence.

Hearings

§ 2700.50 Assignment of Judges.

Judges shall be assigned cases in rotation as far as practicable.

§ 2700.51 Hearing sites.

All cases will be assigned a hearing site by order of the Judge. The Judge shall give due regard to the convenience and necessity of the parties or their

representatives and witnesses, the availability of suitable hearing facilities, and other relevant factors.

§ 2700.52 Expedition of proceedings.

(a) *Motions.* In addition to a motion made pursuant to § 2700.10, a motion to expedite proceedings may be made orally, with concurrent notice to all parties, or served and filed by written telecommunication. Oral motions shall be confirmed in writing within 24 hours.

(b) *Timing of hearing.* Unless all parties consent to an earlier hearing, an expedited hearing on the merits of the case shall not be held on less than four days notice of the hearing.

§ 2700.53 Prehearing Conferences and Statements.

(a) The Judge may require the parties to participate in a prehearing conference, either in person or by telephone. The participants at any such conference may consider and take action with respect to:

(1) The formulation and simplification of the issues;

(2) The possibility of obtaining stipulations, admissions of fact and of documents that will avoid unnecessary proof and advance rulings from the Judge on the admissibility of evidence;

(3) The exchange of exhibits and the names of witnesses and a synopsis of the testimony expected from each witness;

(4) The necessity or desirability of amendments to the pleadings and the joinder of parties;

(5) The possibility of agreement disposing of any or all of the issues in dispute;

(6) Such other matters as may aid in the expedition of the hearing or the disposition of the case.

(b) The Judge may also require the parties to submit prehearing statements addressing one or more of the matters set forth in paragraph (a) of this section.

§ 2700.54 Notice of hearing.

Except in expedited proceedings, written notice of the time, place, and nature of the hearing, the legal authority under which the hearing is to be held, and the matters of fact and law asserted shall be given to all parties at least 20 days before the date set for hearing. The notice shall be mailed by certified or registered mail, return receipt requested or by other appropriate and verifiable means.

§ 2700.55 Powers of Judges.

(a) *General.* Subject to these rules, a Judge is empowered to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by law;

(3) Rule on offers of proof and receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served;

(5) Regulate the course of the hearing;

(6) Hold conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make decisions in the proceedings before him, provided that he shall not be assigned to make a recommended decision; and

(9) Take other action authorized by these rules, by 5 U.S.C. 556, or by the Act.

§ 2700.56 Discovery; general.

(a) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: Depositions upon oral examination or written questions; written interrogatories; requests for admissions; production of documents or objects; or permission to enter upon property, for inspection, copying, photographing, or gathering information.

(b) *Scope of discovery.* Parties may obtain discovery of any relevant, non-privileged matter that is admissible evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Initiation of discovery.* Discovery shall be initiated within 30 days after an answer to a notice of contest, a petition for assessment of penalty, or a complaint under section 105(c) or 111 of the Act has been filed. 30 U.S.C. 815(c) and 30 U.S.C. 821. For good cause shown, the Judge may permit discovery to be initiated after that date.

(d) *Completion of discovery.* Discovery shall be completed within 60 days after its initiation. For good cause shown, the Judge may extend the time for discovery.

(e) *Limitation of discovery.* Upon motion by a party or by the person from whom discovery is sought or upon his own motion, a Judge may, for good cause shown, limit discovery to prevent undue delay or to protect a party or person from annoyance, oppression, or undue burden or expense.

§ 2700.57 Depositions.

(a) *Generally.* Any party, without leave of the Judge, may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories.

(b) *Orders for deposition.* If the parties are unable to agree, the time, place, and manner of taking depositions shall be governed by the order of the Judge.

§ 2700.58 Interrogatories, requests for admissions, and production of documents.

(a) *Interrogatories.* Any party, without leave of the Judge, may serve written interrogatories upon another party. A party served with interrogatories shall answer each interrogatory separately and fully in writing under oath within 25 days of service unless the proponent of the interrogatories agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to an interrogatory shall state the objection in its answer.

(b) *Requests for admissions.* Any party, without leave of the Judge, may serve on another party a written request for admissions. A party served with a request for admissions shall respond to each request for admissions separately and fully in writing within 25 days of service unless the party making the request agrees to a longer time. The Judge may order a shorter or longer time period for responding. A party objecting to a request for admissions shall state the objection in its response. Any matter admitted under this rule is conclusively established for the purpose of the pending proceeding unless the Judge, on motion, permits withdrawal or amendment of the admission.

(c) *Request for production, entry or inspection.* Any party, without leave of the Judge, may serve on another party a written request to produce and permit inspection, copying or photocopying of designated documents or objects, or to permit a party or his agent to enter upon designated property to inspect and gather information. A party served with such a request shall respond in writing within 25 days of service unless the party making the request agrees to a longer time. The Judge may order a shorter or longer period for responding. A party objecting to a request for production, entry or inspection shall state the objection in its response.

§ 2700.59 Failure to cooperate in discovery; sanctions.

Upon the failure of any person, including a party, to respond to a discovery request or upon an objection to such a request, the party seeking discovery may file a motion with the Judge requesting an order compelling discovery. If any person, including a party, fails to comply with an order compelling discovery, the Judge may make such orders in regard to the failure as are just and appropriate, including deeming as established the matters sought to be discovered. For good cause shown the Judge may excuse the party objecting from complying with the request.

§ 2700.60 Subpoenas.

(a) *Compulsory attendance of witnesses and production of documents.* The Commission and its Judges are authorized to issue subpoenas, on their own motion or on the application of a party, requiring the attendance of witnesses and the production of documents or physical evidence at hearings to be held before them or proceedings ordered by them. A subpoena may be served by any person who is at least 18 years of age. The original subpoena bearing a certificate of service shall be filed with the Commission or the Judge.

(b) *Fees payable to witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage as are paid in the district courts of the United States. The witness fees and mileage shall be paid by the party at whose request the witness appears, or by the Commission if a witness is subpoenaed on its own motion or on the motion of a Judge. This paragraph does not apply to Government employees who are called as witnesses by the Government.

(c) *Motions to revoke or modify subpoenas.* Any person served with a subpoena may move within 5 days of service or at the hearing, whichever is sooner, to revoke or modify the subpoena. The Commission or the Judge, as appropriate, shall revoke or modify the subpoena if the subject of the subpoena does not meet the requirement of § 2700.56(b); or the subpoena does not describe with sufficient particularity the evidence required to be produced; or for any other reason the subpoena is found to be invalid or unreasonable. The Commission or the Judge shall make a concise statement of the grounds for the ruling.

(d) *Availability of transcript.* Persons compelled to submit evidence at a public proceeding are entitled to obtain, on payment of prescribed costs, a transcript of that part of the proceeding that involves their testimony or production of evidence.

(e) *Failure to comply.* Upon the failure of any person to comply with an order to testify or a subpoena issued by the Commission or the Judge, the Judge or the Commission's General Counsel at the request of the Judge and the direction of the Commission, may undertake to initiate proceedings in the appropriate district court of the United States for the enforcement of the subpoena.

§ 2700.61 Name of miner informants.

A Judge shall not, except in extraordinary circumstances, disclose or order a person to disclose to an operator or his agent the name of an informant who is a miner.

§ 2700.62 Evidence; presentation of case.

(a) Relevant evidence, including hearsay evidence, that is not unduly repetitious or cumulative is admissible.

(b) A party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

§ 2700.63 Retention of exhibits.

All exhibits received in evidence in a hearing or submitted for the record in any proceeding before the Commission shall be retained with the official record of the proceeding. The withdrawal of original exhibits may be permitted by the Commission or the Judge, upon request and after notice to the other parties, if true copies are substituted, where practical, for the originals.

§ 2700.64 Proposed findings, conclusions and orders.

The Judge may require the submission of proposed findings of fact, conclusions of law, and orders, together with supporting briefs. The proposals shall be served upon all parties, and shall contain adequate references to the record and authorities.

§ 2700.65 Summary disposition of proceedings.

(a) *Generally.* When a party fails to comply with an order of a Judge or these rules, except as provided in paragraph (b) of this section, an order to show cause shall be directed to the party before the entry of any order of default or dismissal. The order shall be mailed by registered or certified mail, return receipt requested.

(b) *Failure to attend hearing.* If a party fails to attend a scheduled hearing, the Judge, where appropriate, may find the party in default or dismiss the proceeding without issuing an order to show cause.

(c) *Penalty proceedings.* When the Judge finds a party in default in a civil penalty proceeding, the Judge shall also enter an order assessing appropriate penalties and directing that such penalties be paid.

§ 2700.66 Summary decision of the Judge.

(a) *Filing of motion for summary decision.* At any time after commencement of a proceeding and no later than 15 days before the date fixed for the hearing on the merits, a party may move the Judge to render summary decision disposing of all or part of the proceeding.

(b) *Grounds.* A motion for summary decision shall be granted only if the entire record, including the pleadings, depositions, answers to interrogatories, admissions, and affidavits, shows: (1) That there is no genuine issue as to any material fact; and (2) that the moving party is entitled to summary decision as a matter of law.

(c) *Form of motion and affidavits.* The motion may be supported by affidavits or other verified documents, and shall specify the grounds upon which the party seeks relief. Supporting and opposing affidavits shall be made on personal knowledge and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts of papers referred to in an affidavit shall be attached to the affidavit or be incorporated by reference if not otherwise a matter of record. The Judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, admissions or further affidavits. When a motion for summary decision is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for hearing. If the party does not respond, summary decision, if appropriate, shall be entered against him.

(d) *Case not fully adjudicated on motion.* If a motion for summary decision is denied in whole or in part, the Judge shall ascertain what material facts are controverted and shall issue an order directing further proceedings as appropriate.

§ 2700.67 Substitution of a Judge.

(a) *Generally.* Should a Judge become unavailable to the Commission, the proceedings assigned to him shall be reassigned to a substitute Judge.

(b) *Substitution following a hearing.* The substitute Judge may render a decision based upon the existing record, provided the parties are notified of his intent and they are given an opportunity to object. An objection to the Judge rendering a decision based upon the existing record shall be filed within 10 days following receipt of the Judge's notice, or the objection shall be deemed to be waived. An objection shall be founded upon a showing of a need for the resolution of conflicting material testimony requiring credibility determinations. Upon good cause shown the Judge may order a further hearing on the merits, which shall be limited, so far

as practicable, to the testimony in dispute.

§ 2700.68 Decision of the Judge.

(a) *Form and content of the Judge's decision.* The Judge shall make a decision that constitutes his final disposition of the proceedings. The decision shall be in writing and shall include all findings of fact and conclusions of law, and the reasons or bases for them, on all the material issues of fact, law or discretion presented by the record, and an order. If a decision is announced orally from the bench, it shall be reduced to writing after the filing of the transcript. An order by a Judge approving a settlement proposal is a decision of a Judge.

(b) *Procedure for issuance.* The Judge shall transmit to the Executive Director his decision, the record (including the transcript), and as many copies of his decision as there are parties plus seven. The Executive Director shall then promptly issue to each party and each Commissioner a copy of the decision.

(c) *Termination of the Judge's jurisdiction.* The jurisdiction of the Judge terminates when his decision has been issued by the Executive Director.

(d) *Correction of clerical errors.* At any time before the Commission has directed that a Judge's decision be reviewed, and on his own motion or the motion of a party, the Judge may correct clerical errors in decisions, orders or other parts of the record. After the Commission has directed that the Judge's decision be reviewed, the Judge may correct such errors with the leave of the Commission. If the Judge's decision has become the final order of the Commission, the Judge may correct such errors with the leave of the Commission.

Review by the Commission

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review is effective only upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions.

(b) *Review discretionary.* Review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Review by the Commission shall be granted only by affirmative vote of not less than two of the Commissioners present and voting.

(c) *Grounds.* Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Scope of review.* If a petition is granted, review shall be limited to the issues raised by the petition, unless the Commission directs review of additional issues pursuant to the provisions of § 2700.71 of this part.

(g) *Denial of petition.* A petition not granted within 40 days after the issuance of the Judge's decision is deemed denied.

§ 2700.71 Review by the Commission on its own motion.

At any time within 30 days after the issuance of a Judge's decision, the Commission may, by the affirmative vote of not less than two of the Commissioners present and voting, direct the case for review on its own motion. Review shall be directed only upon the ground that the decision may be contrary to law or Commission policy or that a novel question of policy has been presented. The Commission shall state in such direction for review the specific issue of law, Commission policy, or novel question of policy to be reviewed. Review shall be limited to the issues specified in such direction for review.

§ 2700.72 Unreviewed decisions.

An unreviewed decision of a Judge is not a precedent binding upon the Commission.

§ 2700.73 Procedure for intervention.

After the Commission has directed a case for review, a person may move to intervene. Such a motion shall be filed not later than 30 days after the Commission's direction for review. Intervention before the Commission shall not be a matter of right but of the sound discretion of the Commission. The movant shall show a legally protectible interest directly relating to the property or events that are the subject of the case on review, that the movant is so situated that the disposition of the proceeding may impair or impede his ability to protect that interest, that the movant should be excused for failing to file for intervention before the Judge, and that the movant's interest is not adequately represented by parties already involved in the proceeding. A motion for intervention shall also show that the granting of the motion will not unduly delay the proceeding or prejudice any party and explain why his participation as an amicus curiae would be inadequate. If the Commission permits intervention, the Commission's order shall specify the time within which the intervenor's brief and any reply brief may be filed. In denying a motion to intervene, the Commission may alternatively permit the movant to participate in the proceeding as an amicus curiae.

§ 2700.74 Procedure for participation as amicus curiae.

After the Commission has directed a case for review, any person may move to participate as an amicus curiae. Such a motion shall be filed not later than 30 days after the Commission's direction for review. Participation as amicus curiae before the Commission shall not be a matter of right but of the sound discretion of the Commission. A motion for amicus curiae participation shall set forth the interest of the movant and show that the granting of the motion will not unduly delay the proceeding or prejudice any party. If the Commission permits amicus curiae participation, the Commission's order shall specify the time within which such amicus curiae brief must be filed and the time within which a reply may be made. The movant may conditionally attach its brief to its motion for amicus curiae participation.

§ 2700.75 Briefs.

(a) *When to file*—(1) *Opening and response briefs.* Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file his opening brief. If the petitioner desires, he may notify the Commission and all other parties within the 30-day

period that his petition and any supporting memorandum are to constitute his brief. Other parties may file response briefs within 30 days after the petitioner's brief is served. If the Commission directs review on its own motion, all parties shall file any opening briefs within 30 days of the direction for review.

(2) *Reply briefs.* In cases where the Commission has granted a petition for discretionary review, the petitioner may file a reply brief within 20 days after the service of the response briefs. In cases where the Commission has directed review on its own motion, a party may file a reply brief within 20 days after service of the opposing party's main brief.

(b) *Additional briefs.* No further briefs shall be filed except by leave of the Commission.

(c) *Length of brief.* Except by permission of the Commission, opening briefs shall not exceed 35 pages, response briefs shall not exceed 25 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the judge, or if some other position is taken, such brief shall not exceed 25 pages.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief is not favored and will not be granted except for good cause shown. A motion for extension of time shall be filed within the time limit prescribed for filing of the brief. The Commission may decline to accept a brief that is not timely filed.

(e) *Consequences of petitioner's failure to file brief.* If a petitioner fails to timely file a brief or to designate the petition as his brief, the direction for review may be vacated.

(f) *Number of copies.* As provided in paragraph (e) of § 2700.5 of these rules, each party shall file seven copies of any brief. If the filing party is not represented by a lawyer or other representative, one copy shall be sufficient.

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission.

(1) Review cannot be granted unless:

(i) The Judge has certified, upon his own motion or the motion of a party, that his interlocutory ruling involves a controlling question of law and that in his opinion immediate review will materially advance the final disposition of the proceeding; or

(ii) The Judge has denied a party's motion for certification of the interlocutory ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the judge's denial of such motion for certification.

(2) In the case of either paragraph (a)(1) (i) or (ii) of this section, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission, may grant interlocutory review upon a determination that the judge's interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Interlocutory review by the Commission shall not operate to suspend the hearing unless otherwise ordered by the Commission. Any grant or denial of interlocutory review shall be by written order of the Commission.

(b) *Petitions for interlocutory review.* Where the Judge denies a party's motion for certification of an interlocutory ruling and the party seeks interlocutory review, a petition for interlocutory review shall be in writing and shall not exceed 10 pages. A copy of the judge's interlocutory ruling sought to be reviewed and of the judge's order denying the petitioner's motion for certification shall be attached to the petition.

(c) *Briefs.* When the Commission grants interlocutory review, unless otherwise ordered, the parties shall file simultaneous briefs not to exceed 25 pages within 20 days of the order granting interlocutory review.

(d) *Scope of review.* Review shall be confined to the issues raised in the judge's certification, or if not certified by the judge, the issues raised in the petition for interlocutory review, unless otherwise specified in the Commission's order granting interlocutory review.

§ 2700.77 Oral argument.

Oral argument may be ordered by the Commission on its own motion or on the motion of a party. A party requesting oral argument shall do so by separate motion at the time that it files a petition for review or brief.

§ 2700.78 Reconsideration.

(a) A petition for reconsideration must be filed with the Commission within 15 days after a decision or order of the Commission. Any response must be filed with the Commission within 10 days of service of the petition.

(b) Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not stay the effect of any decision or order of the Commission and shall not affect the finality of any decision or order for purposes of review in the courts.

§ 2700.79 Correction of clerical errors.

The Commission may correct clerical errors in its decisions at any time.

Miscellaneous

§ 2700.80 Standards of conduct; disciplinary proceedings.

(a) Standards of conduct. Individuals practicing before the Commission and Commission Judges shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.

(b) Grounds. Disciplinary proceedings may be instituted against anyone who is practicing or has practiced before the Commission on grounds that he had engaged in unethical or unprofessional conduct; has failed to comply with these rules or any order of the Commission or its Judges; is disbarred or suspended by any court or administrative agency; or has been disciplined by a Judge under paragraph (e) of this section.

(c) Disciplinary proceedings shall be subject to the following procedure:

(1) *Disciplinary referral.* Except as provided in paragraph (e) of this section, a Judge or other person having knowledge of circumstances that may warrant disciplinary proceedings against an individual who is practicing or has practiced before the Commission shall forward to the Commission for action such information in the form of a written Disciplinary Referral. Whenever the Commission receives a Disciplinary Referral, the matter shall be assigned a disciplinary docket number.

(2) *Inquiry by the Commission.* The Commission shall conduct an inquiry concerning the Disciplinary Referral and may require persons to submit sworn affidavits stating their knowledge of relevant circumstances. Upon completion of its inquiry, if the Commission determines that disciplinary proceedings are not warranted, it shall issue an order stating any appropriate disposition and terminating the referral.

(3) *Transmittal and hearing.* Whenever as a result of its inquiry, the Commission, by a majority vote of the full Commission or a majority vote of a duly constituted panel of the Commission determines that the circumstances warrant a hearing, the Commission shall transmit the matter to the Chief Administrative Law Judge for assignment to a Judge (other than the referring judge) for hearing and decision.

In its transmittal order, the Commission shall specify the disciplinary matters to be resolved through hearing. The Judge shall give the individual opportunity for reply and hearing on the specific disciplinary matters at issue. In any hearing the individual shall have the opportunity to present evidence and cross examine witnesses. The Judge's decision shall include findings of fact and conclusions of law and either an order dismissing the proceedings or an appropriate disciplinary order, which may include reprimand, suspension, or disbarment from practice before the Commission.

(d) Appeal from Judge's decision. Any person adversely affected or aggrieved by the Judge's decision is entitled to review by the Commission by filing a notice of appeal with the Commission within 30 days after the issuance of the Judge's decision.

(e) Misconduct before a Judge. A Judge may order the removal of a representative of a party who engages in disruptive conduct in the Judge's presence. The Judge shall allow the party represented by the person removed a reasonable time to engage another representative. The Judge may also remove any other person who engages in disruptive conduct before the Judge. In all instances of removal of a person for disruptive conduct, the Judge shall place in the record a written statement on the matter. A party aggrieved by a Judge's order of removal may appeal by requesting interlocutory review pursuant to § 2700.75 or, alternatively, may assign the Judge's ruling as error in a petition for discretionary review.

§ 2700.81 Disqualification.

(a) *Withdrawal generally.* A Commissioner or a Judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) *Request to withdraw.* A party may request a Commissioner or a Judge to withdraw on grounds of personal bias or disqualification. A party shall make such a request by promptly filing a sworn affidavit setting forth in detail the matters alleged to constitute personal bias or other grounds for disqualification.

(c) *Procedure if Commissioner or Judge does not withdraw.* If the Commissioner or the Judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling. If the Judge does not disqualify himself, he shall proceed with the hearing, or, if the hearing has been completed, he shall proceed with the issuance of his decision, unless the Commission stays the hearing or further proceedings upon the granting of a petition for interlocutory review.

§ 2700.82 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding;

(2) *Merits of a case* shall be broadly construed by the Commission, and includes discussion of the issues in a case and how those issues should be resolved.

(b) Prohibited ex parte communication. There shall be no ex parte communication with respect to the merits of a case not concluded, between the Commission, including any member, Judge, officer, or agent of the Commission who is employed in the decisional process, and any of the parties, intervenors, representatives, or other interested persons.

(c) Procedure in case of violation:

(1) In the event an ex parte communication in violation of this section occurs, the Commission or the Judge may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take disciplinary action against any person who knowingly and willfully makes or causes to be made a prohibited ex parte communication.

(2) All ex parte communications, whether prohibited or not, shall be placed on the public record of the proceeding.

(d) Inquiries. Any inquiries concerning filing requirements, the status of cases before the Commissioners, or docket information shall be directed to the Office of the Executive Director of the Commission at: Federal Mine Safety and Health Review Commission, 1730 K Street NW., Sixth Floor, Washington, DC 20006.

§ 2700.83 Authority to sign orders.

The Chairman or other designated Commissioner is authorized to sign on behalf of the Commissioners, orders disposing of the following procedural motions: Motions for extensions of time; motions for permission to file briefs in excess of page limits; motions to accept late filed briefs; motions to consolidate; motions to expedite proceedings; motions for oral argument; and similar procedural motions. A person aggrieved by such an order may move within 10 days of the date of the order that the order be signed by the participating Commissioners.

§ 2700.84 Effective date.

These rules are effective (thirty days after publication as final rules in the Federal Register) and apply to cases initiated after they take effect. They also apply to further proceedings in cases then pending, except to the extent that application of the rules would not be feasible, or would work injustice, in which event the former rules of procedure apply.

Dated: February 5, 1990.

Ford B. Ford,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 90-3175 Filed 2-9-90; 8:45 am]

BILLING CODE 6735-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program; Third Party Liability

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

ACTION: Notice of disapproval of proposed amendment.

SUMMARY: OSM is announcing the disapproval of a proposed amendment to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment would have exempted coal mining permittees from the liability of actions of third parties.

After providing for public comments and conducting a thorough review of the proposed amendment, the Director has determined that this amendment does not meet the requirements of SMCRA or the Federal regulations. OSM will recognize only those parts of the Kentucky program that have been approved by the Secretary of the Interior or by the Director of OSM.

DATES: The effective date of this notice is February 12, 1990.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.13, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Amendment

By letter dated April 21, 1988 (Administrative Record Number KY–800), Kentucky submitted program amendments to modify its regulations to conform to changes in Kentucky law enacted by the 1988 Kentucky General Assembly. OSM announced receipt of the proposed amendments in the June 21, 1988, **Federal Register** (53 FR 23287–23289) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on July 21, 1988.

Review of the proposed amendments identified several apparent deficiencies and on September 29, 1988, Kentucky was asked by OSM to submit additional supporting information (Administrative Record Number KY–831). On February 23, 1989, Kentucky responded to OSM's request by submitting additional information (Administrative Record Number KY–859) on five of the six bills enacted by the 1988 General Assembly. In view of the new information provided by Kentucky, OSM announced in the March 31, 1989, **Federal Register** (54 FR 13198–13199) a reopening and extension of the public comment period. This action was taken to afford the public an opportunity to review these proposals in light of the additional information provided by Kentucky. The reopened comment period ended on May 1, 1989.

To expedite action on the amendment pertaining to third-party liability, the Director is addressing in this notice only the changes proposed in Kentucky Senate Bill No. 258. The remaining issues presented by Kentucky's proposed amendments will be addressed in a separate **Federal Register** notice to be published in the near future.

III. Director's Finding

Set forth below pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 735.17, is the Director's finding concerning the proposed amendment.

By passage of Senate Bill No. 258, Kentucky has amended its Surface Mining Law (KRS Chapter 350) by adding a new paragraph (c) to KRS 350.093(6). The language of paragraph (c) relieves a permittee of bond liability for actions of third parties beyond the permittee's control and influence and for which he is not responsible under the permit. Third-party liability was addressed in OSM's July 19, 1983, rulemaking regarding bond and insurance requirements (48 FR 32932–32964). In response to comments on 30 CFR 800.13(d), the preamble to the revised Federal rule stated that the permittee is excused from bonding for third-party actions only insofar as these actions relate to implementation of an approved alternative land use plan by the third party (48 FR 32943). The preamble discussion emphasized that this limited exemption did not relieve the operator of any other obligation including the operator's responsibility for the actions of the third parties. Accordingly and for the reasons discussed, the Director finds that by amending its Surface Mining Law with a new paragraph KRS 350.093(6)(c), Kentucky will render its law less stringent than Sections 509 and 519 of SMCRA and less effective than the Federal regulations at 30 CFR 800.13(d). Therefore, he is disapproving this proposed amendment to Kentucky's Surface Mining Law.

IV. Summary and Disposition of Comments

Public Comments

A public comment period and opportunity for a public hearing was announced in the June 21, 1988, **Federal Register** (53 FR 23287–23289) and closed on July 21, 1988. On March 31, 1989, the public comment period was reopened to afford the public an opportunity to once again consider the proposals in light of additional information submitted by Kentucky (54 FR 13198–13199). No one requested an opportunity to present testimony, so the scheduled hearing was not held. The nature and dispostion of public comments received are summarized below.

Public comments were received from the Kentucky Coal Association, the Kentucky Resources Council and the National Coal Association. Only those comments that are pertinent to this rulemaking will be discussed.

1. The Kentucky Coal Association and the National Coal Association supported the amendment. The Kentucky Coal Association stated that this amendment paralleled language in the approved Pennsylvania permanent program.

For the reasons discussed in the Director's finding, the amendment cannot be approved. Although Pennsylvania's permanent program appears to contain similar language to the proposed Kentucky amendment, the merits of the Kentucky amendment must be judged on the basis of its consistency with the requirements of SMCRA and the Federal regulations. OSM is aware of this deficiency in Pennsylvania's program and has notified the State regulatory authority that a program change may be necessary.

2. The Kentucky Resource Council commented that to limit the bond liability of a permittee with regard to third-party actions is inconsistent with SMCRA and the Federal regulatory requirements and must be disapproved. They urged that the provisions of this bill not be implemented by Kentucky until approved by OSM.

The Director agrees with the commenter that the amendment is inconsistent with SMCRA and the Federal regulatory requirements and has discussed this issue in the Director's finding. The Director also agrees that the statutory amendment contained in Senate Bill No. 258 should not be implemented by Kentucky. OSM recognizes only those parts of the Kentucky program that have been approved by the Secretary of the Interior or the Director of OSM. Implementation by Kentucky of unapproved State program changes, could result in Federal enforcement action under 30 CFR part 733.

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director also solicited comments from various Federal agencies. Of the agencies invited to comment on the proposed amendment, the Department of Energy, the Environmental Protection Agency, the Fish and Wildlife Service, the U.S. Department of Labor, the Tennessee Valley Authority, the Federal Bureau of Mines and the Advisory Council on Historic Preservation responded. Only nonsubstantive comments together with acknowledgments were received from these agencies.

V. Director's Decision

Based on the above finding, the Director is disapproving the amendment presented in Senate Bill No. 258 as submitted on April 21, 1988, and clarified on February 23, 1989. The specific provision disapproved is KRS

350.093(6)(c). The Director has determined that the amendment is less stringent than SMCRA and less effective than the Federal regulations.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

Dated: February 6, 1990.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

[FR Doc. 90-3288 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 917

Kentucky Regulatory Program; Third-Party Liability

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

ACTION: Notice of proposed action to preempt certain provisions of State law.

SUMMARY: OSM is announcing and seeking public comments on a proposed action by OSM to preempt certain provisions of the Kentucky Surface Mining Law (KRS chapter 350) enacted into law by the 1988 Kentucky General Assembly by the passage of Senate Bill No. 258. The provisions proposed for preemption involve the limiting of a permittee's responsibility for third party actions.

This action is being taken because the Director of the Office of Surface Mining Reclamation and Enforcement (Director) has determined that these provisions are less stringent than the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Director's determination is discussed in the "Director's Finding" section of a Notice of Disapproval of Proposed Amendment to the Kentucky Regulatory Program which is also appearing in today's **Federal Register**.

DATES: Written comments on other information must be received by 4 p.m. on March 14, 1990. Comments received after that date will not necessarily be considered in the Director's decision.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Roger Calhoun, Acting Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program and administrative record on the Kentucky program are available for public review at the OSM and the State regulatory authority offices listed below Monday through Friday, 9 a.m. to 4 p.m. excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Kentucky Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940.

FOR FURTHER INFORMATION CONTACT: Roger Calhoun, Acting Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

By a letter dated April 21, 1988 (Administrative Record No. KY-800), Kentucky submitted to OSM proposed amendments to the Kentucky program to conform to changes in Kentucky law enacted by the 1988 General Assembly. OSM announced receipt of the proposed amendments on June 21, 1988 (53 FR 23287), and in the same notice, requested public comments and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended July 21, 1988.

OSM's review of the proposed amendments identified several concerns, and on September 29, 1988, OSM asked Kentucky to submit additional supporting information (Administrative Record No. KY-831). On February 23, 1989, Kentucky responded to OSM's request (Administrative Record No. KY-859). In view of the new information provided, OSM announced in the March 31, 1989, **Federal Register** (54 FR 13198-13199) the receipt of this information and again solicited public comments. The reopened comment period ended on May 1, 1989.

By a letter dated May 12, 1989 (Administrative Record No. KY-886), OSM notified Kentucky that KRS 350.093(6)(c) as amended by Senate Bill No. 258 is, "less effective than the Federal laws and regulations". Kentucky was advised by OSM not to implement the amended statute. By a letter dated May 17, 1989 (Administrative Record No. KY-891), Kentucky advised OSM that they would not interpret this statute contrary to its clear language, nor could they modify the corresponding regulations to interpret this statute consistent with the Federal rule. Therefore, preemption of the provisions of Senate Bill No. 258 is necessary to maintain consistency with SMCRA.

II. Director's Findings and Proposed Action

Pursuant to section 505 of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt the language of the KRS 350.093(6)(c) and to require Kentucky to implement the Kentucky program as approved by OSM.

The specific wording proposed for preemption in KRS 350.093(6)(c) reads as follows: "Actions of third parties which are beyond the control and influence of the permittee and for which the permittee is not responsible under the permit shall not be covered by the bond." The Director proposes to take this action because he has determined that this provision is less stringent than sections 509 and 519 of SMCRA and less effective than 30 CFR 800.13(d) based on the reasons discussed in a separate Notice of Disapproval of Proposed Amendment to the Kentucky Regulatory Program also appearing in today's **Federal Register**.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 730.11(a), OSM is now soliciting public comments on its proposal to preempt KRS 350.093(6)(c). If no evidence is received demonstrating why KRS 350.93(6)(c) should not be preempted, a final notice will be published to effect that action and to require Kentucky to operate and enforce the approved program as if the preempted provisions do not exist.

Written Comments

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

Dated: February 6, 1990.

W. Hord Tipton,

Deputy Director, Operations and Technical Services.

[FR Doc. 90-3287 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-89-65]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is considering adding regulations governing the State Road 706 (Indiantown Road) drawbridge at Jupiter by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular and vessel traffic has increased. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 29, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, Room 484, 909 SE. 1st Avenue, Miami, FL. Normal office hours are between 7:30 am and 4 pm, Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536-4103.

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 concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Walt Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Proposed Regulations

The bridge presently opens on signal except that from November 1 through 30 April, from 7 a.m. to 6 p.m. daily, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. The Town of Jupiter originally requested a change to a 30-minute opening schedule during weekdays. Analysis of highway traffic data indicates this 2-lane roadway has a heavy traffic level of service from 11 a.m. until 6 p.m.; however, the number of bridge openings average less than 2 times per hour. In addition, the strong currents and restricted channel conditions adjacent to the bridge result in unsafe holding conditions for vessels required to wait for an opening. Extending the opening schedule to 30 minutes is considered unduly hazardous to navigation. This proposal, which extends the existing rules year-round, is intended to reduce the impact of bridge openings by spacing them apart at sufficient intervals to return vehicular traffic to normal flow before the next opening. The openings are set at sufficient intervals to reduce their duration and to limit the waiting time for vessels.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

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

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1g.

2. Section 117.261(q) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway, St. Marys River to Key Largo.

* * * * *

(q) *Indiantown Road (SR 706) bridge, mile 1006.2 at Jupiter.* The draw shall open on signal; except that from 7 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated January 26, 1990.

Martin H. Daniell,

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

[FR Doc. 90-3180 Filed 2-9-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AC90

Loan Guaranty; Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans; Specially Adapted Housing

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: To comply with the provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, the Department of Veterans Affairs (VA) is proposing to amend its regulations (1) by making the specially adapted housing grant authorized by 38 U.S.C. 801(b) available for acquiring a residence that has already been adapted with special features; (2) by adding to the regulations the credit standards to be used in underwriting a VA guaranteed home loan; (3) by adding to the regulations the standards and procedures to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans; and (4) by providing a lender certification, a process for assessing liability against a lender and an appeal process for such assessment. The regulations governing VA direct loans are also being amended to require use of the proposed credit standards regulation.

DATES: Comments must be received on or before March 14, 1990. Comments will be available for public inspection until March 26, 1990. VA proposes to make

these regulations effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until March 26, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Schneider, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, (202) 233–3042.

SUPPLEMENTARY INFORMATION: The credit standards used in underwriting VA guaranteed home loans are currently stated in the Veterans Benefits Administration Circular 26–80–11, last revised December 2, 1987. The standards for obtaining credit reports and processing guaranteed loans have also been published in administrative issues.

Prior to the enactment of Public Law 99–576, the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, the $6,000 grant authorized under 38 U.S.C. 801(b) was available to certain disabled veterans for adapting the veteran's current residence with special features. To be eligible for the grant veterans must have a permanent and total service-connected disability which is due to blindness or includes the loss or loss of use of both hands. These proposed regulations implement the provision of Public Law 99–576 which makes the grant available for acquiring a residence that has already been adapted.

As required by Public Law 99–576, the proposed regulations contain standards to be used by lenders in underwriting VA guaranteed loans and obtaining credit information. They include: (1) A debt-to-income ratio, (2) minimum residual income guidelines, (3) criteria for evaluating the reliability and stability of the income of the loan applicant, and (4) standards to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans.

There are two primary underwriting tools that are used in determining a veteran's ability to meet living expenses including the monthly mortgage payment. They are a debt-to-income ratio and a calculation of a veterans' residual income. The ratio is a result of comparing the veteran's total anticipated monthly obligations, including housing expenses, to his or her stable monthly income. Currently the debt-to-income ratio for VA loans is 41 percent and that is the ratio proposed in these regulations. Based on available statistical data standards provided in these regulations as to what is the recommended residual income for a veteran.

In certain cases, depending upon the ratio and residual income, some loans will need specific written justification if made automatically by lenders having automatic underwriting authority, any other loans will have to be sent to VA for prior approval of the veteran. Loans in which the veterans ratio is less than or meets the 41 percent ratio established in these regulations and meets or exceeds the applicable residual income standard no additional written justification will be required. Likewise, loans in which the veteran's ratio exceeds 41 percent but does not exceed 45 percent and the veteran's residual income is at least 20 percent higher than the residual income standard, will not need additional justification for approval. Loans needing additional justification, which includes a listing of the specific compensating factors considered, are (1) those in which the ratio is 41 percent or less but the residual income standard is not met, (2) those in which the ratio is 42 to 45 percent and the residual income is met, and (3) loans in which the ratio is 46 to 50 percent and the residual income standard is exceeded by 20 percent or more. Loans not falling into these categories may be sent to the VA for prior approval with an explanation from the lender as to why the lender believes the loan is approvable.

In evaluating the veteran's ability to handle the expenses of home ownership the underwriter may consider only the stable and reliable income of the veteran. Income will be considered stable and reliable only if it can be reasonably concluded that it will continue during the foreseeable future.

Lenders are responsible for developing all credit information, e.g., for obtaining credit reports and verifications of employment and deposit. They must obtain the credit reports from reputable credit reporting agencies. These regulations will require that all credit reports obtained by a lender on an individual veteran's loan must be submitted to VA. Lenders must certify that they have complied with VA's credit information and loan processing standards provided in these regulations and otherwise prescribed by the Secretary. The proposed regulations will implement the provision of Public Law 99–576 which authorizes the Government to collect a penalty from any lender who knowingly and willingly makes a false certification. The regulations provide a specific certification that must be submitted with each loan submission and the instances in which liability for false certification may be assessed. The penalty will be equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

An attempt has been made in these proposed regulations to be as specific as possible while maintaining the judgment factor that must be present when underwriting loans. It is believed that each loan application must be underwritten in a reasonable and prudent manner, taking into account all the factors present for each veteran-applicant.

A change has also been made to § 36.4514(c) to require the use of the credit standards when underwriting a VA direct loan.

The original purpose of the VA manufactured home program was to make housing available to low and lower income veterans. Information to that effect has been removed from the regulations as the program now serves a wider population.

Technical amendments have been made to the appropriate sections of the regulations to change the term "mobile home" to "manufactured home." These changes are made so that the terminology of the regulations will be in conformity with the language of Public Law 97–306, 96 Stat. 1429, enacted October 14, 1982.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The credit underwriting standards and procedures for obtaining credit information and processing VA guaranteed loans contained in these regulations are similar to those which are currently in effect. They have been published previously in administrative issues and released to participating lenders. Pursuant to 5 U.S.C. 605(b), these proposed regulations are, therefore, exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Secretary has also determined that the proposed regulations are not a "major rule" within the meaning of Executive Order 12291. They will not have an annual effect on the economy of

$100 million or more; they will not cause a major increase in costs or prices for consumer or individual industries; and they will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Paperwork Reduction Act

Section 36.4337 of this regulation contains information collection requirements. Although there are five different collections required in this section they are being treated as a whole because they are all a part of the loan application and credit underwriting process. Public reporting burden for this collection of information is estimated to be one hour per response with a total of 193,000 hours. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on this proposed information collection requirement should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Joseph F. Lackey.

(Catalog of Federal Domestic Assistance Program Numbers 64.114 and 64.119)

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is proposed under the authority granted the Secretary by sections 210(c), 1803(c)(i), 1810(b), 1832 and 1812 of title 38, United States Code, and Public Law 99-576.

Approved: September 18, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 36, Loan Guaranty, is proposed to be amended as follows:

PART 36—[AMENDED]

1. In § 36.4206, the section heading is revised, paragraph (b) is redesignated as paragraph (d), paragraph (a) is revised, and new paragraphs (b) and (c) are added to read as follows:

§ 36.4206 Underwriting standards, occupancy, and non-discrimination requirements.

(a) Except for refinancing loans pursuant to 38 U.S.C. 1812(a)(1)(F), no loan shall be guaranteed unless the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined by use of the standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 1812).

(b) Use of the standards in § 36.4337 of this part for underwriting manufactured home loans will be waived only in extraordinary circumstances.

(Authority: 38 U.S.C. 1812)

(c) The lender responsibilities contained in § 36.4337 of this part and the certification required and penalties to be assessed under § 36.4337a of this part against lenders making false certifications also apply to lenders originating VA guaranteed manufactured home loans under the authority of 38 U.S.C. 1812.

(Authority: 38 U.S.C. 1812)

* * * * *

§§ 36.4207 and 36.4208 [Amended]

2. In §§ 36.4207 and 36.4208 in the headings and text, remove the words "Mobile" and "mobile" wherever they appear and add, in their place, the words "Manufactured" and "manufactured", respectively.

3. An undesignated center heading and § 36.4337 are added to read as follows:

Underwriting Standards, Processing Procedures, and Lender Responsibility and Certification

§ 36.4337 Underwriting standards, processing procedures and lender responsibility.

(a) Except for refinancing loans guaranteed pursuant to 38 U.S.C. 1810(a)(8), no loans shall be guaranteed unless the term of repayment bears a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined by use of the standards in paragraph (b) of this section.

(b) *Methods.* There are two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income. They are: debt-to-income ratio and residual income. Each is described in paragraphs (c) and (d) of this section respectively. Ordinarily, in order to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt to income ratio exceeds 41 percent but does not exceed 45 percent, a lender may approve the loan without written justification if the veteran's residual income exceeds the applicable VA standard by 20 percent or more.

(2) If the debt-to-income ratio exceeds 41 percent but does not exceed 45 percent and the veteran's residual income meets the VA standard but does not exceed that standard by 20 percent or more, the loan may be approved with justification.

(3) If the debt-to-income ratio equals or exceeds 46 percent but does not exceed 50 percent and the veteran's residual income exceeds the standard by 20 percent or more the loan may be approved with justification.

(4) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification.

(5) In any case not described in paragraphs (b)(1) through (b)(5) of this section, the loan may be submitted to the Secretary for consideration of waiver of these standards. The lender's decision to submit such loan for the Secretary's prior approval must be justified.

(6) In any case described by paragraphs (b)(2) through (b)(5) of this section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors justifying the approval or submission of the loan, such as significant liquid assets, long term employment, excellent long term credit, little or no increase in shelter expense, and satisfactory home ownership, among others. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual

veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (e) of this section as well as a variety of compensating factors that should be evaluated.

(c) *Debt-to-income ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees, homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; i.e., 35.6 percent would be rounded to 36 percent. If the ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax free income which should be noted in the loan file) the steps cited in paragraphs (b)(1) through (b)(5) of this section apply.

(d) *Residual income.* The guidelines provided in this paragraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to $69,999 and for loan amounts of $70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher-than-average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets; i.e., cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application shows little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjuction with the steps outlined in paragraphs (b)(1) through (b)(6) of this section. The residual income guidelines are as follows:

(1) Residual income guidelines—(i) *Table of residual incomes by region (for loan amounts of $69,999 and below):*

TABLE OF RESIDUAL INCOMES BY REGION (FOR LOAN AMOUNTS OF $69,999 AND BELOW)

Family Size *	Northeast	Midwest	South	West
1	$348	$340	$340	$379
2	583	570	570	635
3	702	687	687	765
4	791	773	773	861
5	821	803	803	894

* For families with more than five members, add $70 for each additional member up to a family of seven.

(ii) *Table of residual incomes by region (for loan amounts of $70,000 and above):*

TABLE OF RESIDUAL INCOMES BY REGION (FOR LOAN AMOUNTS OF $70,000 AND ABOVE)

Family Size *	Northeast	Midwest	South	West
1	$401	$393	$393	$437
2	673	658	658	733
3	810	792	792	892
4	913	893	893	995
5	946	925	925	1031

* For families with more than five members, add $75 for each additional member up to a family of seven.

(iii) *Geographic regions for residual income guidelines:*

Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont

Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin

South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia and West Virginia

West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New

Mexico, Oregon, Utah, Washington and Wyoming

(iv) *Military Adjustment*: For loan applications in which either the borrower or the spouse is an active-duty serviceperson, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.)

(2) *Income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(i) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified. If the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. (In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (d)(2)(iii) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given consideration when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(ii) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus should be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income, may, if properly verified, be used to offset the payments due on debts and obligations of a relatively short term. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset short-term debts, as above. Certain military allowances, as to which likely duration cannot be determined, will also be used only to offset short-term obligations. Such allowances are: Pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset short-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Pub. L. 94–239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(iii) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B), such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681b) limits the permissible purposes for which credit reports may be ordered, in the absense of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(iv) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is ued by the Family Housing Office to advise personnel regarding family housing. Unless conditions of item e or f of DD Form 1747 apply, the applicant's quarters allowance cannot be considered. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for off-base housing are so long that it is improbable that individuals desiring to pruchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(v) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions, and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. The length of the veteran's employment in this type of occupation is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position.

(vi) *Self-employment.* When a self-employed applicant has been in the business a relatively short period of time (i.e., less than 2 years), sufficient information must be obtained to ascertain that the applicant has the training, experience and other qualifications necessary to be successful in the enterprise. For any self-employed person, verification of the amount of income is accomplished by obtaining a profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be prepared by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant. Depending on the situation, this data may be on the veteran and/or the business. When it is otherwise not possible to determine a self-employed applicant's qualification from an income standpoint, the applicant may wish to voluntarily offer to submit copies of complete income tax returns, including all schedules for the past 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earning record. Depreciation claimed as a deduction on the tax return or financial record of the business may be added in as net income. If the business is a corporation or partnership, a list of all stock-holders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanations as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(vii) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(A) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(B) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(C) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal

income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(D) To illustrate the foregoing, it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who as an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(viii) *Employment of short duration.* The provisions of paragraph (d)(2)(vii) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(ix) *Rental income.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to make the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other background involving both property maintenance and rental or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses. Proposed rental of the veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income. If income from rental property will be used to qualify for the new loan, then the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (d)(2)(vi) of this section) depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(x) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit cetificate (MCC), see paragraph (d)(2)(xi) of this section.) Any State or local taxes should be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W–4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(xi) *Mortgage credit certificates.* (A) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCCs may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(B) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(C) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a $600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a $180 (30 percent $\times$ $600) tax credit each month. However, because the annual tax credit, which amounts to $2,160 (12 $\times$ $180), exceeds $2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to $2,000 per year (Public Law 98–369) or $167 per month ($2,000 − 12). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to $433 ($600 − $167). This reduction should also be reflected when calculating Federal income tax.

(D) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax

liability. If, in the above sample, the veteran's tax liability for the year were only $1,500, the monthly tax credit would be limited to $125 ($1,500×12).

(e) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that the lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Prior VA loans.* When the veteran's certificate of eligibility, or loan application, or other information available to the lender indicates use of VA guaranteed loan entitlement in connection with a prior loan, the lender to which the veteran is currently applying for an additional loan is on notice that VA loan experience with the applicant is an element to be considered. Such experience, especially if it is recent, may be so unfavorable that further credit is not warranted. Since credit experience with veterans' guaranteed or insured loans may not be reported by lenders to credit agencies, credit reports obtained in connection with the evaluation of a subsequent loan may be deficient to that extent. Therefore, lenders processing loans on an automatic basis should develop evidence through the originator or holder of the previous loan(s) on the status and experience of such loan(s). If information cannot be obtained, lenders may contact the VA regional office through which the loan(s) was obtained. Failure to do so will subject the lender to the risk of a possible determination by the VA that when all the facts and circumstances that were readily available are considered, the conclusion of the lender relative to compliance with 38 U.S.C. 1810(b)(3) ought not be recognized as reasonable and proper and that the loan should be considered ineligible for guaranty.

(3) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained consumer items on credit subsequent to the bankruptcy and has met the payments on these obligations in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risk may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discarged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy, and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(4) *Petition under Chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee and Bankruptcy Judge (Referee) approve of the new credit.

(5) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(6) *Long-term v. Short-term debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of $100 on an auto loan with a remaining balance of $500 would be included in these obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5 months. It is clear that the applicant

will, in this case, continue to carry the burden of those $100 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(7) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be rated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, and lenders should be sure ratings on such accounts are obtained. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(8) *Job-related expense.* Known job-related expense should be documented. This will include costs for any dependent care, union dues, group hospitalization insurance, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(9) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. From time to time the Secretary as well as the entities listed above will provide the names of the national organizations that provide credit reports meeting the requirements of the Residential Mortgage Credit Report Standards. The names of such organizations are available through the VA and other participating entities. All credit reports obtained by the lender must be submitted to VA.

(f) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(g) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(h) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent, or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required home loan certification on the home loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender.

even if disclosure is not provided to VA under paragraph (g)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (g)(3) and (g)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(6) Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in these regulations.

(i) *Definitions.* (1) The definitions contained in part 42 of this chapter are applicable to this section.

(2) *Another Appropriate Amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed $10,000, the Secretary shall consider:

(i) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(ii) The frequency and past pattern of such false certifications by the lender; and,

(iii) Any exculpatory or mitigating circumstances.

(3) *Complaint* includes the assessment of liability served pursuant to this section.

(4) *Defendant* means a lender named in the complaint.

(5) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 1814.

(j) *Procedures for certification.* (1) As a condition to VA issuance of a loan guaranty on all loans closed or after the effective date of these regulations, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 1814 on or after the effective date of these regulations, the following certification shall accompany each loan closing or assumption package:

The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in Chapter 37 of Title 38 United States Code and 38 CFR part 36, and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief.

(2) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337a(b)(1) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed $10,000, whichever is greater.

(k) *Assessment of liability.* (1) Upon an assessment confirmed by the Chief Benefits Director, in consultation with the investigating Official, that a certification, as required in this section, is false, a report of findings of the Chief Benefits Director shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and,

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Chief Benefits Director and the Investigating Official that there is not adquate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed.

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(l) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at §§ 42.8 through 42.47 of this chapter.

(m) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 1804 and Part 44 of this chapter or loss of automatic processing authority pursuant to 38 U.S.C. 1802, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 1810)

4. In § 36.4402, the introductory text of paragraph (b) is revised to read as follows:

§ 36.4402 Eligibility.

* * * * *

(b) *Eligibility, adaptations grants.* No beneficiary shall be eligible for assistance under section 801(b) of chapter 21, for the cost of reasonably necessary adaptations to an existing structure or for the inclusion of such adaptations in proposed construction or for the purchase of a structure already including such adaptations unless it is determined pursuant to §§ 36.4401 through 36.4410 of this part that:

* * * * *

5. In § 36.4404, paragraph (b)(1) is revised to read as follows:

§ 36.4404 Computation of cost.

* * * * *

(b) * * *

(1) The actual cost, or in the case of a veteran acquiring a residence already adapted with special features, the fair market value of the adaptations, including installation costs, determined to be reasonably necessary, or

* * * * *

6. In § 36.4514, paragraph (c) and paragraphs (g)(1) through (g)(3) are revised to read as follows:

§ 36.4514 Eligibility requirements.

* * * * *

(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred and that the proposed payments on such obligation bear a proper relationship to present and anticipated income and expenses as determined by use of the credit standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 210(c))

* * * * *

(g) * * *

(1) Neither the applicant nor anyone authorized to act for the applicant, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, or national origin;

(2) The applicant recognizes that any restrictive covenant on the property relating to race, color, religion or national origin is illegal and void and any such covenent is specifically disclaimed; and

(3) The applicant understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

§ 36.4515 [Amended]

7. In § 36.4515(a) remove the word "him" where it appears and add, in its place, the words "the veteran".

[FR Doc. 90-2942 Filed 2-9-90; 8:45 am]

BILLING CODE 6320-1-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 372

[OPTS-400040; FRL-3668-9]

Barium Sulfate; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is issuing a proposal to grant the petitions to exempt barium sulfate from the reporting requirements under the category "barium compounds" of the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The proposal to exempt is based on EPA's review of the available data on the health and environmental effects of barium sulfate. This review resulted in the conclusion that this chemical does not meet the health and environmental effects criteria under section 313(d)(2) of EPCRA. In addition, EPA concluded that unlike other barium salts, such as barium chloride and barium nitrate which have appreciable water solubilities and thus are toxic, barium sulfate has limited solubility in water. The limited solubility of barium sulfate in water, resulting from the strong affinity that barium ion has for the sulfate ion, results in low availability of barium ion. The fact that barium ion exhibits toxicity only at levels which far exceed the availability results in a low-level of concern for this chemical.

EPA is developing a policy on the management of petitions to add or delete chemicals from the chemical categories established under section 313(d). As in the previous petition response to delete three copper pigments (54 FR 20666), this petition has raised a number of important questions about how EPA should deal with individual members of listed categories. EPA received public comment and is developing a policy on this issue. Therefore, EPA may not promulgate this rulemaking until that overall category policy has been established.

DATES: Written comments must be submitted on or before April 13, 1990.

ADDRESSES: Written comments should be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office (TS-779), Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS-400040.

FOR FURTHER INFORMATION CONTACT: Robert Israel, Petition Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll Free: 800-535-0202, In Washington, DC and Alaska: 202-479-2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

The response to this petition is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479). This statement provides guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days by initiating a rulemaking or by issuing an explanation of why the petition is denied.

II. Description of Petition

On August 7, 1989, EPA received a petition from the Petroleum Equipment Suppliers Association (PESA) to delete barium sulfate ($BaSO_4$) from the list of toxic chemicals. On September 18, 1989, EPA received another petition to delete $BaSO_4$ from the Dry Color Manufacturers' Association (DCMA). The Agency has decided to review both petitions simultaneously. $BaSO_4$ is subject to section 313 reporting requirements because it meets the definition of a barium compound. Both petitions were based on the contention that $BaSO_4$ is not toxic and does not meet any of the statutory criteria under section 313(d)(2). The statutory deadline for EPA's response is February 3, 1990.

III. EPA's Review of Barium Sulfate

A. Chemistry Profile

$BaSO_4$ is a heavy odorless solid which occurs in nature as the mineral barite. Barite typically consists of 96 percent barium sulfate. The 4 percent impurities include iron oxide, quartz compounds, strontium sulfate, and barium carbonate. $BaSO_4$ can be synthesized by treating barium sulfide or barium chloride with sodium sulfate. $BaSO_4$ can also be generated from barium carbonate and sulfuric acid. $BaSO_4$ melts at 1,580 °C and has a density of 4.5 g/cm^3.

$BaSO_4$ has a very low solubility in water (2.46 mg/L at pH 7 and 60 mg/L at pH 0.5). One of the factors which contribute to this limited water solubility is the strong affinity of the barium ion for the sulfate ion. $BaSO_4$ is slightly more soluble in most acidic solutions. This solubility only becomes appreciable in concentrated sulfuric acid.

B. Health and Environmental Effects

Information on the most significant health and environmental hazards likely to be associated with $BaSO_4$ were assessed. All readily available data were reviewed, including those provided by the petitioners, studies retrieved from a search of the recent literature, and documents prepared by the Agency. The Agency also looked at the availability of barium ion, because of concerns for barium ion toxicity.

1. *Absorption and bioavailability.* The barium ion from $BaSO_4$ is absorbed slowly into the animal system as the

compound dissolves. This bioavailability has been observed following intramuscular injection, oral dosing, and inhalation or intratracheal instillation. Following intratracheal instillation in rats, approximately 1.3 percent of the barium from a dose of 2.8 ug of $BaSO_4$ was absorbed via solubilization. From *in vivo* and *in vitro* studies, the physical form of barium appears to have a profound influence on the amount of barium available from the compound, i.e., freshly precipitated and heat treated $BaSO_4$ has alonger half-life than barium chloride and a shorter half-life than barium fused on clay.

For small doses of $BaSO_4$ (5 ug/100g body weight) administered orally to rats, there is little, if any, difference in the amount of barium absorbed when compared to the much more water-soluble barium chloride. However, when massive doses of $BaSO_4$ (60 to 400 g) were given orally to human subjects as a contrast medium for x-ray diagnoses, approximately 10 to 100 ug of barium above background was excreted in the urine in 24 hours.

2. *Human toxicity.* A literature search revealed that there is no evidence of cancer, developmental toxicity, reproductive toxicity, neurotoxicity, gene mutations, or chronic toxicity associated with exposure to $BaSO_4$.

$BaSO_4$ is not known to cause any toxicity followed by administration by the oral route, with the exception of impaction of the colon following high doses when used as an x-ray contrast medium. Inhalation of $BaSO_4$ dust causes a benign pulmonary reaction with mobilization of polymorphonuclear leucocytes and macrophages (baritosis), and characteristic radiographic changes with dense, discrete, small opacities which are due to $BaSO_4$ itself and not to any tissue lesions. These effects are without symptoms and without decrement in pulmonary function.

There is no evidence to support a hypothesis that $BaSO_4$ has any hypertensive action. The studies which indicate that barium ion induces hypertension were carried out with a water-soluble barium salt.

3. *Barium ion.* Barium is essentially a muscle poison causing stimulation followed by paralysis. Accidental poisoning from ingestion of water-soluble barium salts has resulted in gastroenteritis, muscular paralysis, decreased pulse rate, and ventricular fibrillation and extrasystoles.

The toxicity of barium salts is related to their solubility in water. The insoluble forms of barium, particularly $BaSO_4$, are not toxic by the oral route. Unlike other barium salts, such as barium chloride and barium nitrate which have appreciable water solubilities, 375 g/L and 90 g/L, respectively, and thus are toxic, $BaSO_4$ has a limited solubility in water. The limited solubility of $BaSO_4$ in water, resulting from the strong affinity that barium ion has for the sulfate ion, results in low availability of barium ion. This low availability combined with the fact that barium ion exhibits toxicity only at levels which far exceeds the availability results in a low-level of concern for $BaSO_4$.

4. *Environmental fate.* Releases to water are not expected to result in appreciable exposures because of the density (4.5 g/cm^3) and low water solubility (2.46 mg/L) of $BaSO_4$. Any release to water is primarily in the form of transported particulates, which will tend to settle during waste water treatment.

In soils, barium ion is not expected to be very mobile because of the formation of water-insoluble salts and its inability to form soluble complexes with humic and fulvic materials.

In oxygenated environments it is not expected that the barium ion will become available by aerobic degradation of barium sulfate. However, there is the possibility that anaerobic degradation of $BaSO_4$ will yield barium ion and sulfide anion. The barium ion would then be associated with carbonate ion. There is insufficient information available to determine whether the rate of transformation is of significant concern.

C. Use, Release, and Exposure

1. *Production and use.* The majority of the $BaSO_4$ used in the United States is naturally occurring $BaSO_4$, barite. In 1988, total barite mined in the United States was 480 million kilograms. Imports of barite in 1988 were 1.1 billion kilograms. Consumption of barite in 1988 was 1.6 billion kilograms. The processing of mined barite, termed beneficiation, occurs either at the mine, or at a separate site of a domestic barite producer. The leading producers of barite were M–I Drilling Fluids, Milpark Drilling Fluids, and NL Baroid. There are 53 domestic facilities which the Bureau of Mines reported as producers of barite in 1988. However, only three companies, M–I Drilling Fluids, Milpark Drilling Fluid, and Pfizer reported under EPCRA section 313. The other companies placed themselves in Standard Industrial Classification (SIC) codes not covered under section 313.

$BaSO_4$ can also be produced by treating another barium salt, such as, barium chloride or barium sulfide, with sodium sulfate. Alternatively, $BaSO_4$ can be synthesized from barium carbonate and sulfuric acid. These methods are typically used when very pure $BaSO_4$ is required.

The primary use of natural $BaSO_4$, barite, is as a drilling mud. Barite is desirable as a drilling mud because of its high specific gravity, chemical inertness, relative nonabrasiveness, and ready availability.

Natural $BaSO_4$ or bleached $BaSO_4$ is also used as a filler and extender. It is used as a filler in coatings, particularly in the primer coats in the painting of automobiles, because of its low oil absorption, easy wettability by oils, and good sanding qualities.

The processing of $BaSO_4$ depends on the purity required. Barite is beneficiated by washing to remove soluble impurities, then crushed and agitated for further purification.

Naturally occurring $BaSO_4$ can also be bleached by chemical treatment with acid and/or sodium sulfide to remove and decolorize iron compounds. If a purer form is required, the $BaSO_4$ can be converted to barium sulfide and then converted back to $BaSO_4$. This conversion is effected because barium sulfide can be separated from the impurities in barite more readily than $BaSO_4$.

Barite is also used as a filler in plastic and rubber products to add density and improve processing properties. It is used in polyurethane carpet backing, bowling balls, white sidewall tires, and glass.

Purified $BaSO_4$, which is known as blanc fixe, is used as a white filler in paints, rubber, inks, and photographic paper. Lithopone, which is a mixture of $BaSO_4$ and zinc sulfide is also used as a white filler in paints.

Pharmaceutical grade $BaSO_4$ is used as the opaque ingredient in a barium meal which is administered before x-raying the digestive tract for diagnostic purposes.

2. *Exposure and release.* Only limited data are available on releases of $BaSO_4$ that result from mining operations, because this type of operation is not subject to reporting under EPCRA section 313. Information on releases of $BaSO_4$ which result from its use as a drilling mud is limited because releases due to oil drilling are also not subject to reporting under EPCRA section 313.

Many companies process, as well as mine, $BaSO_4$ but do not consider themselves subject to EPCRA section 313 because they place themselves in the mining SIC code. The only producers of barite who reported under EPCRA section 313 were the Milpark and M–I Drilling Fluid companies. These companies reported only emissions to air. The largest fugitive emissions to air (which are reportable), 8,500 kg/yr, were

at Milpark's New Orleans, LA facility. The exposure calculated to result from this release is 366 mg/yr based on the Generic Turner Method of estimating exposure.

There are two sources of air emissions during processing of $BaSO_4$ as a filler, extender, or pigment: unloading the dry barite into storage bins and during mixing of the dry powders into the process. The largest release of $BaSO_4$ to air via stack emission, 66,500 kg/yr, was reported by Mobil Corporation's Ferndale, WA facility (This facility is now owned by the BP Oil Company.). This release resulted in a calculated exposure of 2 mg/yr.

IV. Explanation for Proposed Action to Delete

A. General Policy

EPA has broad discretion in determining whether to grant or deny petitions under section 313. When granting a petition, EPA has an obligation to show how the granting of the petition fulfills the statutory criteria EPA is to use in section 313(d) when modifying the list of toxic chemicals. When denying a petition, the Agency must issue an explanation of why the petition is denied. In the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specific analyses in making listing determinations under section 313(d). EPA has concluded that potential exposure can be considered in making decisions to revise the list of chemicals. In all evaluations, EPA has discretion to consider a variety of factors to determine whether it is appropriate to add chemicals to or delete chemicals from the list, albeit limited in the case of petitions under section 313(d) by the 180-day period.

B. Reason for Proposing Deletion

EPA is proposing to grant the petitions submitted by PESA and DCMA to delete $BaSO_4$ from the barium compounds category on the section 313 list of toxic chemicals. The decision to grant these petitions is based on EPA's toxicity evaluation of $BaSO_4$ compound, the low availability of the barium ion from $BaSO_4$, and the lack of any toxicity due to available barium ion. EPA believes that there is no evidence that $BaSO_4$ is known to cause or can reasonably be anticipated to cause health or environmental effects as described in section 313(d)(2). In addition, EPA has concluded that unlike other barium salts, such as barium chloride and barium nitrate which have appreciable water solubilities and thus are toxic, $BaSO_4$ has limited solubility in water. The limited solubility of $BaSO_4$ in water coupled with the affinity that barium ion has for the sulfate ion results in low availability of barium ion. The fact that barium ion exhibits toxicity at levels which far exceed the availability of barium caused by the release of $BaSO_4$ to the environment results in a low-level of concern for this chemical.

EPA is developing a policy on the management of petitions to add or delete chemicals from the chemical categories established under section 313(d). As in the previous petition response to delete three copper pigments (54 FR 20866), this petition has raised a number of important questions about how EPA should deal with individual members of listed chemical categories. EPA has received public comment and is developing a policy on this issue. EPA may choose to develop an overall category policy before any final action is taken to delete this chemical from the section 313 list of toxic chemicals.

V. Rulemaking Record

The record supporting this decision is contained in docket control number OPTS–400040. All documents, including an index of the docket, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

VI. Request for Public Comment

EPA requests comment on this proposal to delete $BaSO_4$ from the barium compounds listing under EPCRA section 313. EPA is also requesting comment on the possible anaerobic degradation of $BaSO_4$. Because the anaerobic degradation of $BaSO_4$ could yield a more water-soluble barium compound, there may be concerns for this degradation. Any pertinent data on the rates of this reaction should be submitted to the address listed under the **ADDRESS** unit at the front of this document.

All comments must be submitted on or before April 13, 1990.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore, requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major rule" because it will not have an effect on the economy of $100 million or more.

This proposed rule would decrease the impact of the section 313 reporting requirements on covered facilities and would result in cost-savings to industry, EPA, and States. Therefore, this is a minor rule under Executive Order 12291.

This proposed rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291.

Releases of $BaSO_4$ are not reported separately but rather are reported under the section 313 category of "barium compounds", but it is expected that about 361 of the 486 sites reporting release of barium and barium compounds for 1987 are estimated to have reportable quantities of $BaSO_4$ (USEPA, 1989). The estimated cost savings to industry if $BaSO_4$ was deleted from the section 313 list would be $915 per year per reporting facility. The cost savings to EPA per report per facility would be $21.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities will be significantly affected by a proposed rule. Because the proposed rule results in cost savings to facilities, the Agency certifies that small entities will not be significantly affected by the proposed rule.

C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 372

Community-right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: February 3, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

§ 372.65 [Amended]

2. In § 372.65(c) by adding the following language to the barium

compounds listing "(except for barium sulfate)".

[FR Doc. 90-3247 Filed 2-9-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No. 90-6; FCC 90-14]

Public Mobile Service; Filing and Processing of Applications for Unserved Areas in the Cellular Service and To Modify Other Cellular Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Rules for filing, processing and selection of applications for unserved areas in the Domestic Public Cellular Radio Telecommunications Service are being proposed. Current licensees in MSAs and RSAs have five years to expand their systems free from the filing of competing applications (fill-in period). The proposed rules are for applications filed after the five year fill-in period has expired. The proposed rules would also modify several rules applicable to all licensees.

DATES: Comments must be filed by April 2, 1990. Reply comments are due by April 17, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmen Borkowski or Stephen Markendorff, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, in CC Docket No. 90-6, adopted January 11, 1990 and released February 6, 1990.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The following collection of information contained in the proposed rules has been submitted to the Office of Management and Budget (OMB) for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Amendment of part 22 of the Commission's Rules to provide for filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules.

Action: New Collection.

Respondents: Businesses or other for-profit (including small businesses or organizations).

Frequency of Response: On occasion.

Estimated Annual Burden: Section 22.924: 20,000 responses: 160,000 hours total; 8 hours average burden per response. Section 22.903(f)(1): 1,200 responses; 2,400 hours total; 2 hours average burden per response. Section 22.925: 1,200 responses; 3,600 hours total; 3 hours average burden per response. FCC Form 489: 500 responses; 1,750 hours total; 3.5 hours average burden per response.

Needs and Uses: Information is needed to apply for a license for unserved areas in the cellular service. Such applications are required to be filed by law under the provisions of the Communications Act and FCC part 22. Common carriers applying for licenses in the cellular service are the affected public.

Summary of Notice of Proposed Rulemaking

Current rules give each cellular system licensee the opportunity to expand its system for a period of five years from the date its authorization is granted, free from the filing of competing applications. This time frame is known as a fill-in period. The Commission has previously determined that applications for any remaining unserved areas would be filed without a wireline frequency set aside, would not be accepted for filing until after the expiration of the fill-in period and the adoption of rules for processing applications for unserved areas.

The Notice of Proposed Rulemaking recognizes that the economic value of any remaining unserved areas is speculative at best. Yet, there are good reasons to allow applicants to file for these areas if no service exists in these areas at the end of the fill-in period.

The notice proposes that applications for unserved areas be filed when the individual five year fill-in period in a particular Metropolitan Statistical Area (MSA) or Rural Service Area (RSA) expires. However, comments are also being requested on whether filing windows should be established for applications whose five year fill-in period has already expired or will expire during the pendency of this rulemaking.

In addition, the notice also proposes that applications be filed under normal notice and cut-off procedures, with a 30 day cut-off period, instead of date certain filings to determine mutual exclusivity. It is proposed that applications be considered mutually exclusive if they are for the same frequency block and their proposed Cellular Geographic Service Areas [CGSAs or the geographic area served by a cellular system within which the licensee is authorized to provide service] overlap in such a way that a grant of one would preclude the grant of one or more of the other applications. This proposal would, in effect, eliminate the current MSA/RSA boundary lines and treat applications as mutually exclusive only if the engineering proposals actually conflict. Moreover, applications would be considered mutually exclusive if received by the Commission in a condition acceptable for filing within 30 days of public notice of the first-filed application. Comment is also sought on an alternative proposal that for one year after adoption of rules for unserved areas, applications filed within the same MSA be considered mutually exclusive regardless of whether the CGSAs overlap. This is to expedite the application process immediately following adoption of the new rules.

The proposed definition for unserved areas is, those areas of the country where no CGSA or 39 dBu contour exists. However, it is also being proposed that the definition include areas of the country where, after the five year fill-in period has run, an authorized CGSA covers a particular area but the licensee has not extended its actual coverage area into the full boundaries of its CGSA. The proposed definition excludes "dead spots" (where a customer does not receive service within the service area for reasons of terrain or other technical reasons).

The notice also proposes that existing licensees pull back their CGSAs where, after the five year fill-in period has run, an authorized CGSA covers a particular

area but the licensee has not extended its 39 dBu contours to cover the area into the full boundaries of its CGSA. This proposal is to make clear that carriers should not be able to protect areas where no service to the public is being provided. Comment is sought on the procedures to be used to accomplish the goal of reducing existing CGSA boundaries to be coextensive with 39 dBu contours. Likewise, applicants for unserved areas must propose CGSAs which are coterminous with the 39 dBu contours.

It is also being proposed that in the filing of applications for unserved areas no party may have an ownership interest, direct or indirect, including interests of less than one percent, in more than one mutually exclusive unserved area application. Applicants for unserved areas may not have an interest in more than one pending application for the same or an overlapping CGSA even if on different frequency blocks. This is to prevent a person from having an unfair cumulative chance in any lottery which would be held if multiple applications for the same geographic territory are filed.

The Notice proposes that unserved area permittees not be allowed to sell an authorization for unserved areas by transfer, assignment or any other form of alienation, when the facilities have not been constructed. Rather, only constructed systems could be sold. It is being proposed for unserved areas not to follow the policy adopted in Bill Welch, 3 FCC Rcd 6502 (1988), to prevent the filing of speculative applications for these unserved areas. There is for these areas, the last remaining in the country, a higher probability that applications will be filed for the mere sake of speculation or delaying the expansion of an already authorized system. This rule proposal will not affect policies for MSA and RSA permittees.

In addition, the notice proposes a one year construction period for unserved areas, coupled with the proposed requirement that licensees have equipment on order and State certification proceedings initiated, within 3 months from the authorization date. It is being proposed that this will be a condition to the authorization and these requirements will be enforced through automatic cancellation of the authorization for failure to comply with this rule. This is to guarantee expeditious service to the public and deter speculative applications.

It is also being proposed that existing RSA licensees be permitted to enter into contracts to permit an unserved area licensee to maintain a 39 dBu contour covering both an unserved area and an area in an RSA where the five year fill-in period has not yet run. This approach can improve the ability of an applicant to create a viable service area while protecting the existing RSA licensee's exclusive fill-in rights. In addition, there is a proposal to permit existing RSA licensees to allow others to file inside the RSA during the five-year fill-in period. This would eliminate the section 22.31(f) two step process for transferring a portion of an RSA to a third party.

Application rules generally same as RSAs with some modifications:

In general, the notice recommends that applicants only propose one CGSA per application, mutually exclusive applications would be selected by lotteries and applications for unserved areas would be filed and processed in the same form required for RSA applications. Thus, the letter perfect and unacceptable for filing standards would be followed. Applications would be filed at the Strip Commerce Center Facility in Pittsburgh, an original and one paper copy along with three microfiche copies must be filed. The notice also proposes to allow full market settlements but no partial settlements between mutually exclusive applicants. There is also a proposal to not allow amendments prior to the lottery except for minor amendments (to modify contours to eliminate the mutual exclusivity), and amendments under § 22.23(g)(2) of the Rules, which would resolve frequency conflicts in a mutually exclusive situation.

Proposed Rules Applicable to all cellular licensees:

The notice also proposes not to continue the policy of allowing nonwireline carriers to file petitions to defer the initiation of wireline service to the public on the basis that the wireline has an anticompetitive headstart. With the ability of the competing carrier to resell the wireline's service until its facilities are built, there is no competitive reason to delay the wireline's provision of service to the public. The Commission has never granted a petition to defer because insufficient evidence of an anticompetitive headstart has been provided by petitioners.

In addition, there is a proposal to restrict common ownership in competing cellular systems. It is proposed that no person may have a direct or indirect ownership interest in both frequency blocks in overlapping CGSAs, unless such interests pose no substantial threat to competition. This is to promote competition in the markets.

The Notice also proposes to require that all licensees file with the Commission 180 days prior to the time the five year fill-in period expires an updated map of its contours and CGSA and a frequency utilization chart or frequency plan. This is necessary to update our records and to process applications for unserved areas.

It is also being proposed to amend section 22.917 (a)(1) and (b)(2) to eliminate the requirement that financial showings be filed in support of modified facilities in any MSA or RSA market. This requirement appears to be needlessly burdensome to applicants.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j) and 303(r) of the Communications Act of 1934, 47 U.S.C. sections 151, 154(i), 154(j) and 303(r) that there is issued a Notice of Proposed Rulemaking.

Pursuant to section 1.415 of the Commission's rules, 47 CFR Section 1.415 that all interested persons may file comments on the matters discussed in this Notice and the proposed rule changes by April 2, 1990, and reply comments by April 17, 1990.

It is ordered, that the Secretary shall cause a copy of this Notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. section 603, *et seq.*).

List of Subjects

47 CFR part 1

Administrative practice and procedure, Lotteries, Random selection.

47 CFR part 22

Communications common carriers, Domestic public cellular radio telecommunications service, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-3219 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Parts 2 and 90

[PR Docket No. 88-553; DA 90-117]

Provision for Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order extending comment and reply comment periods.

SUMMARY: The Chief, Land Mobile and Microwave Division, Private Radio Bureau, has adopted an *Order* extending the deadline in which to file comments and reply comments to the *Notice of Proposed Rule Making* in this proceeding. The new dates are April 16, 1990, and June 1, 1990, respectively. This action is taken to provide interested parties sufficient time to analyze the issues involved and prepare comments.

DATES: Comments due April 16, 1990; Reply Comments due June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Levin, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION: The summary of the *Notice of Proposed Rule Making* in this proceeding was printed in the Federal Register on January 9, 1990 at 55 F.R. 744.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile & Microwave Division, Private Radio Bureau.

[FR Doc. 90-3152 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 22

[CC Docket No. 88-411]

The Use of Cellular Telephones in Aircraft

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Extension of time.

SUMMARY: On February 1, 1990, the Commission adopted an Order, granting the Air Transport Association (ATA) an extension of time to file reply comments in response to a Federal Aviation Administration (FAA) letter concerning the use of cellular telephones in aircraft. In order to promote administrative efficiency, the Order establishes a common reply date for all parties.

DATES: Date for filing reply comments to the FAA letter is extended to March 5, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta (202) 632-6450.

SUPPLEMENTARY INFORMATION: The notice of proposed rulemaking was adopted August 15, 1988 and released September 2, 1988 (53 FR 35851, September 15, 1988).

In the Matter of Airborne use of Cellular Unites and the Use of Cell Enhancers in the Domestic Public Cellular Radio Service.

Order

Adopted: February 1, 1990.

Released: February 2, 1990.

By the Chief, Common Carrier Bureau:

1. On January 22, 1990, the Air Transport Association of America (ATA), on behalf of its member airlines, requested an extension of time to March 5, 1990, in which to file reply comments in response to a Federal Aviation Administration (FAA) letter concerning the above-referenced proceeding.

2. ATA states that several of its member airlines have indicated they are unable to submit reply comments by the February 2, 1990 reply date because of the limited period for response and the business travel schedules of technically qualified staff members. ATA further states that, given the technical complexity of this proceeding and the potential safety implications to the over one million passengers carried daily by ATA's members, it believes that the public interest would best be served by extending the due date for filing reply comments.

3. Accordingly, good cause having been shown, the extension of time requested by ATA will be granted. In order to promote administrative efficiency, a common response date for all parties will be established. Therefore, the due date for filing reply comments is extended to March 5, 1990.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 90-3151 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 89-87]

Television Broadcasting Services; Bessemer and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition filed by Channel 17 Associates, Ltd., to amend the Television Table of Allotments to change the community of license of Channel 17 from Tuscaloosa to Bessemer, Alabama, and to modify the license of Station WDBB(TV), Channel 17, Tuscaloosa, accordingly. With this action, the proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 89-87, adopted January 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3155 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-31, RM-7131]

Radio Broadcasting Services; West Point, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bob McRaney Enterprises, Inc., requesting the substitution of FM Channel 265C3 for Channel 265A at West Point, Mississippi. Petitioner also requests modification of its license for Station WKBB, Channel 265A, to specify operation on Channel 265C3. The coordinates for Channel 265C3 are 33-37-21 and 88-45-05.

DATES: Comments must be filed on or before March 29, 1990, and reply comments on or before April 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bob McRaney, Jr., President, Bob McRaney Enterprises, Inc., Forrest Street, P.O. Box 1336, West Point, Mississippi 39773.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-30, adopted January 18, 1990, and

released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3157 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-32, RM's-6954; 7051; 7077; 7200]

Radio Broadcasting Services; Fairmont, NC, et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on four mutually exclusive petitions for rule making. Southern Communications, Inc., permittee of a new FM station at Charleston, SC, requests the substitution of Channel 263C2 for Channel 264A at Charleston and the modification of its permit accordingly. Little River Radio requests the allotment of Channel 264A to Little River, SC, as its first local FM service. Little River Radio is requested to provide further information demonstrating that Little River is a community for allotment purposes since it is neither incorporated nor listed in the 1980 U.S. Census. Pro Media, Inc., licensee of Station WZYZ-FM, Fairmont, NC, requests the substitution of Channel 265C2 for Channel 265A at Fairmont and the modification of its license accordingly. In addition, Pro Media requests the substitution of Channel 264A for Channel 265A at Andrews, SC, and the modification of Station WQSC's license accordingly, as well as the substitution of Channel 263A for Channel 264A at Charleston, SC, along with the modification of Southern Communication's permit to specify the alternate Class A channel. Clarence E. Jones, licensee of Station WMNY-FM, Elloree, SC, requests the substitution of Channel 262C3 for Channel 262A at Elloree and the modification of his license to specify the higher powered channel. In ccordance with the provisions of Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of the higher powered co- or adjacent channels at Charleston, SC, Elloree, SC, or Fairmont, NC, or require the petitioners to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 29, 1990, and reply comments on or before April 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 and Mark N. Lipp, Esq., Mullin, Rhyne, Emmons & Topel, P.C., 1000 Connecticut Avenue, NW., Suite 500, Washington, DC 20036 (Counsel to Southern); Mark J. Prak, Esq., Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, North Carolina 27602 (Counsel to Pro Media); Edward W. Hummers, Jr., Esq., Robert A. DePont, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to Jones); and Samuel B. Roberts, 1270 15 Mile Landing, Awendaw, South Carolina 29429 (Petitioner for Little River).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No.90-32, adopted January 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Channel 264A can be allotted to Little River in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.4 kilometers (0.9 miles) southwest to avoid a short-spacing to Station WTRG, Channel 264C, Rocky Mount, North Carolina. The coordinates are 33-52-00 and 78-37-00. Channel 265C2 can be allotted to Fairmont with a site restriction of 30.8 kilometers (19.1 miles) southeast to accommodate petitioner's desired transmitter site at coordinates 34-15-47 and 78-55-50. This allotment is contingent upon the substitution of Channel 263C3 for Channel 263A at Marion, SC (RM-7080). Channel 264A can be allotted to Andrews and can be used at Station WQSC's present transmitter site at coordinates 33-24-24 and 79-27-07. Channel 263A can be allotted to Charleston and can be used at the site specified in Southern Communications' construction permit. The coordinates are 32-49-20 and 79-58-45. Channel 263C2 can be allotted to Charleston with a site restriction of either 7.1 kilometers south, at coordinates 32-41-59 and 79-55-34, or with a 21.4 kilometer southwest, at coordinates 32-36-30 and 80-04-00. Channel 262C3 can be allotted to Elloree in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) southwest to avoid a short-spacing to Station WSCQ, Channel 261A, West Columbia, SC, and to the pending applications for Channel 262A at Pawley's Island, SC, at coordinates 33-22-00 and 80-40-00.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3158 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-33, RM-7080]

Radio Broadcasting Services; Marion, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by John W. Pittman seeking the substitution of Channel 263C3 for Channel 263A at Marion, South Carolina, and the modification Station WQTI-FM's construction permit accordingly. Channel 263C3 can be allotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 21 kilometers (13.1 miles) northwest. The coordinates for this allotment are North Latitude 34-19-23 and West Longitude 79-32-32. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 263C3 at Marion or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before March 29, 1990, and reply comments on or before April 13, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, North Carolina 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-33, adopted January 18, 1990, and released February 6, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3154 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 73

[MM Docket No. 90-30, RM-7191]

Radio Broadcasting Services; Rock Island and Moses Lake, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KXA Radio Corporation, permittee of Station KXXA(FM), Channel 258A, Rock Island, Washington, proposing the substitution of Channel 258C3 for Channel 258A at Rock Island, and the modification of its station's permit to special operation on the higher class channel. In order to accomplish the Rock Island upgrade, the proposal requires the substitution of Channel 242A for Channel 257A at Moses Lake, Washington, and the modification of the license of Station KDRM(FM) at Moses Lake accordingly. The specified coordinates for Channel 258C3 at Rock Island are 47-22-52 and 120-17-15. The coordinates for Channel 242A at Moses Lake are 47-05-54 and 119-17-47, at Station KDRM(FM)'s present transmitter site. In addition, the proposal requires concurrence by the Canadian government.

DATES: Comments must be filed on or before March 29, 1990, and reply comments on or before April 13 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Neal J. Friedman, Esq., Pepper & Corazzini, 1776 K Street NW., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-30, adopted January 19, 1990 and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3156 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

47 CFR Part 80

[PR Docket No. 90-26; FCC 90-33; RM-6770]

Maritime Services; VHF Ship Station Transmitters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require VHF ship station transmitters to automatically cease operation after a

specified period of uninterrupted operation and give an indication the transmitter had stopped operating. This action was initiated by a petition for rule making (RM-6770) submitted by the Southern California Marine Radio Council (SCMRC). The effect of the proposed rules will be to reduce instances of interference through inadvertent operation of VHF transmitters.

DATES: Comments are due on or before March 29, 1990. Reply comments are due on or before April 13, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George R. Dillon, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 90-26, adopted January 22, 1990, and released February 5, 1990. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendment, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. The proposal to require that VHF ship station transmitters automatically cease operation after a predetermined period of time responds to a petition (RM-6770) filed by the Southern California Marine Radio Council (SCMRC). The SCMRC requested that all VHF ship station transmitters operating in the maritime mobile band be required to have a signal time-out timer that would disable the transmitter after a period of time. The SCMRC stated that the time-out timer would eliminate the repeated problem of "stuck" carriers on channel 16 and other channels caused by inadvertent activation of the transmitter caused by improper placement of the microphone.

2. The proposed rules would reduce harmful interference to marine VHF channels used for safety communications by eliminating prolonged inadvertent keying of VHF shipboard transmitters operating in the maritime mobile service. VHF transmitters would have to automatically cease operation after any period of uninterrupted transmission lasting more than three minutes and give an indication that the transmitter had ceased operating.

3. Comments are invited on what the period of uninterrupted operation should be before the transmitter automatically ceases operation. We also request comments on whether the particular deactivation indicating device should be a matter of manufacturer discretion or specifically required to be aural, visual, or both.

4. The proposed rule is set forth at the end of this document.

5. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

6. The Commission hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) that these rules will not have a significant economic impact on a substantial number of small entities. The greatest initial impact of the proposed rules will be on manufacturers of shipboard VHF transmitters (approximately twelve in number). A relatively simple design change that is not expected to appreciably increase the cost of manufacturing these transmitters would be necessary. We believe the equipment phase out periods will provide sufficient time for manufacturer, dealers, and consumers to respond in such a manner that any adverse impact will be minimized.

7. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

8. Authority for issuance of this Notice of Proposed Rule Making is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 29, 1990 and reply comments on or before April 13, 1990. The Commission will consider all relevant and timely comments before taking final action in this proceeding.

10. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 80

Communications equipment, Maritime services, Maritime mobile stations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule

Part 80 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, 3 UST 3450, 3 UST 4726, 12 UST 2377, unless otherwise noted.

2. In § 80.203, the first sentence of paragraph (a) is revised, paragraphs (c) through (k) are redesignated as paragraphs (d) through (l), and a new paragraph (c) is added to read as follows:

§ 80.203 Authorization of transmitters for licensing.

(a) Each transmitter authorized in a station in the maritime services after September 30, 1986, except as indicated in paragraphs (g), (h) and (i) of this section, must be type accepted by the Commission for part 80 operations. * * *

* * * * *

(c) Effective August 1, 1992, all VHF ship station transmitters capable of operation in the 156–162 MHz band that are either manufactured in or imported into the United States, or are installed on or after August 1, 1993, must be equipped with an automatic timing device that deactivates the transmitter after an uninterrupted transmission period in excess of three minutes and a device that indicates when the automatic timer has deactivated the transmitter. VHF ship station transmitters installed before August 1, 1993, are authorized for use indefinitely at the same maritime station.

* * * * *

[FR Doc. 90-3218 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[GEN Docket No. 88-441; DA 90-116]

Advanced Technologies for the Public Safety Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending comment and reply comment periods.

SUMMARY: The Chief, Land Mobile and Microwave Division, Private Radio Bureau, has adopted an Order extending the deadline in which to file comments and reply comments to the Further Notice of Inquiry in this proceeding. The new dates are May 15, 1990, and July 16, 1990, respectively. This action is taken to provide interested parties sufficient time to analyze the issues involved and prepare comments.

DATES: Comments due May 15, 1990; Reply Comments due July 16, 1990.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION: The summary of the Further Notice of Inquiry in this proceeding was printed in the Federal Register on December 15, 1989 at 54 F.R. 51425.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile & Microwave Division, Private Radio Bureau.

[FR Doc. 90-3153 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 83-426, FCC 90-11]

Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action terminates the *Further Notice of Proposed Rule Making* (50 FR 37878, September 18, 1985) in the above-referenced proceeding, released September 12, 1985. The Commission has taken this action because a substantial amount of time has elapsed since comments were filed. As a result, the record in this proceeding is stale and no decision is possible on the current record. Another proceeding will be initiated if the Commission chooses to pursue these issues further.

DATES: Effective February 12, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rosalind K. Allen, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Radio, Private operational fixed microwave service.

Order

Adopted: January 10, 1990.

Released: January 11, 1990.

By the Commission:

1. On April 1, 1985, we adopted a *First Report and Order* (*First Order*) in the above-captioned proceeding.[1] Under the regulation established in the *First Order*, licensees in the Private Operational-Fixed Microwave Service (OFS) may sell excess capacity on their own systems to other part 94 eligibles.[2] In addition, entrepreneurs may build private microwave systems solely to sell capacity to other part 94 eligibles for a profit. In either case, service may only be provided to meet the internal communications needs of eligible entities.

2. In the *First Order*, we indicated that we would issue a *Further Notice of Proposed Rule Making* (*Further Notice*) to determine whether we should allow OFS licensees to lease capacity on their systems to common carriers for the transmission of common carrier communications. Common carriers are eligible to use the OFS frequencies,[3] but, like other eligibles, their use is limited to communications that are internal in nature. Our Rules specifically prohibit use of radio facilities licensed under part 94 for rendition of a common carrier communications service. 47 CFR 94.9(b)(1).

3. The *Further Notice*, released September 12, 1985,[4] proposed to permit private carriers to lease capacity to non-dominant common carriers to transmit common carrier traffic.[5] It attracted substantial comment from a broad range of parties, including private licensees, common carriers, government entities, and trade associations. Due to the length of time which has elapsed since comments were filed and the substantial changes in the communications industry, the record in this proceeding is stale and no decision is possible on the current record. Further inquiry would be necessary before action could be taken. We are therefore terminating this proceeding and will initiate another if we find it appropriate to pursue these issues at a later time.

4. In view of the above, pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, it is ordered that this proceeding is terminated without further action.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-3220 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

---

[1] First Report and Order, Docket No. 83-426, 57 RR2d 1486 (1985).

[2] "Eligibles" includes anyone eligible for a license under part 80 (which governs stations in the Maritime Services), part 87 (which governs Aviation Services), or part 90 (which governs Private Land Mobile Radio Services). 47 CFR 94.5.

[3] Entities engaged in the operation of a commercial activity are eligible to be licensed in the Business Radio Service. 47 CFR 90.75(a)(1). Common carriers are, of course, engaged in a commercial activity. Common carriers are also eligible under Section 90.81 (Telephone Maintenance Radio Service) to use OFS facilities for communications directly related to the construction, repair, maintenance or operation of their communications common carrier facilities. 47 CFR 90.81.

[4] Further Notice of Proposed Rule Making, PR Docket No. 83-426, [FCC 85-454] released September 12, 1985, 50 FR 37878 (September 18, 1985).

[5] The *Further Notice* proposed that non-dominant common carriers who are OFS licensees be prohibited from using the frequencies for their own common carrier traffic. It also proposed to preclude dominant common carriers from any of the rule liberalizations. A dominant common carrier is defined by the Rules as a carrier found by the Commission to have market power (*i.e.*, power to control prices). A non-dominant common carrier is a carrier not found to be dominant. 47 CFR 61.12.

Notices

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-009]

Receipt of a Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inpection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment.

Application no.	Applicant	Date received	Organism	Field test location
89-362-01	Rohm and Hass Company	12-28-89	Tobacco plants genetically engineered for insect resistanace using *Bacillus thuringiensis*.	North Carolina.

Done in Washington, DC, this 6th day of February 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-3173 Filed 2-9-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-004]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

Place, dates, and time of meeting: The meeting will be held in the Idaho Room of the University Park Holiday Inn, 425 West Prospect Road, Ft. Collins, Colorado, February 27 through March 1, 1990. Sessions will be held from 8 a.m. to 5 p.m. on February 27 and February 28, and from 8 a.m. to 12 noon on March 1.

FOR FURTHER INFORMATION CONTACT: Dr. M.A. Mixson, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, USDA, room 746, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (Committee) advices the Secretary of Agriculture of means to suppress, control, or eradicate an outbreak of foot-and-mouth disease, or other destructive foreign animal or poultry disease, in the event these diseases should enter the United States. The Committee also advises the Secretary of Agriculture of means to prevent these diseases.

Discussions at the upcoming meeting will include, among other things, the expectations of the Committee for 1990, emergency preparedness goals for the Animal and Plant Health Inspection Service (APHIS), and a review of APHIS plans to deal effectively with outbreaks of foreign diseases. A representative of the Agricultural Research Service will report on that agency's foreign animal disease research activities. The Committee will also develop recommendations and prepare comments on control and eradication guides for foot-and-mouth disease and other foreign animal diseases.

This meeting will be open to the public. However, due to time constraints, the public will not be allowed to participate in the Committee's discussion. Written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Dr. M.A. Mixson at the above address, or may be filed at the meeting.

Done in Washington, DC, this 6th day of February 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-3174 Filed 2-9-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Fisheries Adivsory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA.

TIME AND DATE: Meeting will convene at 8:30 a.m., March 1, 1990, and adjourn at 4:00 p.m., March 2, 1990.

PLACE: The Madison Hotel, 15th and M Streets, Washington, DC.

STATUS: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, state, consumer, academic, and other national interests.

MATTERS TO BE CONSIDERED: March 1, 1990, 8:30 a.m.–5:30 p.m., (1) marine recreational fisheries issues—action plan, survey; (2) consumer affairs issues—seafood inspection, National Fish and Seafood Promotional Council; (3) protected resources issues—marine mammal observer program, steller sea lions; (4) state/Federal/council issues—grants management, Magnuson Act. March 2, 1990, 8:30 a.m.–4:00 p.m., (1) commercial fisheries issues—driftnet negotiations, fishery trade, enforcement: uniform application of penalties and processing; (2) fisheries litigation; (3) fisheries legislation, and (4) budget.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff—Fisheries, Office of Legislative Affairs, NOAA, 1335 East-West Highway, Silver Spring, MD 20910. Telephone: (301) 427–2259.

Dated: February 6, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 90–3227 Filed 2–9–90; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: DOD Medical Examination Review Board (DODMERB) Report of Medical History; DD Form 2492; and OMB Control Number 0704–0269.

Type of Request: Reinstatement of a Previously Approved Collection for Which Approval Has Expired.

Average Burden Hours/Minutes Per Repsonse: .25 Hours Per Response.

Frequency of Response: One Response Per Applicant.

Number of Respondents: 60,000

Annual Burden Hours: 15,000.

Annual Responses: 60,000

Needs and Uses: Military Service Academies; the Uniform Services of the Health Sciences (USUHS); Reserve Officer Training Corps (ROTC) programs (all services). The Department of Defense Medical Examination Review Board (DODMERB) needs this form to collect medical history of applicants to determine medical acceptability for entry into the 5 service Academies, USUHS, and the ROTC programs, including the College Scholarship Program.

Affected Public: Individuals, Federal agencies or employees.

Frequency: On occasion.

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

OMB Desk Officer: Dr. J. Timothy Sprehe. Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison. Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3187 Filed 2–9–90; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

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

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement, Part 223, Safety Precautions for Ammunition and Explosives; No Form; and OMB Control Number 0704–0272.

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: 40 Minutes.

Frequency of Response: On occasion.

Number of Respondents: 400.

Annual Burden Hours: 265.

Needs and Uses: The clause at 252.223–7001 requires contractors to comply with certain DoD safety requirements and to provide notification reports to the Government of any noncompliance.

Affected Public: Businesses or other for-profit.

Frequency: Continuing.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendation on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: February 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3188 Filed 2–9–90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Retirement Homes Advisory Board; Change in Location and Time

AGENCY: Assistant Secretary of Defense (Force Management and Personnel).

ACTION: Notice of Change in Location and Time.

SUMMARY: On Thursday, February 1, 1990 (55 FR 3451), the Department of Defense published a notice of open meeting. This notice is published to notify persons of the change in location and time. The changes are as follows:

Change in Location: The Pentagon, room 1A1079.

Change in Time: 0830–1230.

All other information remain unchanged.

FOR FURTHER INFORMATION CONTACT: LTC K. Deutsch, telephone 202–697–7197.

Dated: February 6, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3189 Filed 2–9–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Follow-on Forces Attack; Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack scheduled for January 30, 1990 as published in the **Federal Register** (Vol. 54, No. 248, Page 53358, Thursday, December 28, 1989, FR Doc. 89–30147) will be held on March 23, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3260 Filed 2–9–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies; Meeting

ACTION: Change in dates of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Army Subgroup on Low Observable Technologies scheduled for February 21 and March 22 as published in the **Federal Register** (Vol. 54, No. 223, Page 48125, Tuesday, November 21, 1989, FR Doc. 89–27349) will be held on March 1 and April 12, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–3261 Filed 2–9–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Intent To Grant Exclusive Patent License To Flow Research, Inc.

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Flow Research, Inc., 21414 68th Avenue S., Kent, Washington, 98032, a corporation of the State of Washington, an exclusive license under United States Patent No. 4,863,220, which matured from application Serial No. 287,195 filed 19 December 1988 in the name of Jack J. Kolle for a "Highly Reliable Method of Rapidly Generating Pressure Pulses for Demolition of Rock."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent may be obtained, on request from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Office of The Judge Advocate General, HQ USAF/JACP, 1900 Half Street SW., Washington, DC 20324–1000, Telephone No. (202) 475–1386.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–3237 Filed 2–9–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 14, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden, and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: February 6, 1990.

George P. Sotos,

Acting Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension.

Title: Application for Grants under the "Grants to Institutions to Encourage Minority Participation in Graduate Education".

Frequency: Annually.

Affected Public: Non-Profit institutions.

Reporting Burden: Burden Hours: 376.

Responses: 94.

Recordkeeping Burden: Burden Hours: 0.

Recordkeepers: 0.

Abstract: This form will be used by institutions of higher education to apply for funding under the grants to Institutions to Encourage Miniority Participation in Graduate Education

Program. The Department will use the information to make grant awards.

Type of Review: Revision.

Title: Application for Grants under the Ronald E. McNair Post-Baccalaureate Achievement Program.

Frequency: Annually.

Affected Public: State or local governments; non-profit institutions.

Reporting Burden: Burden Hours: 2660.

Responses: 165.

Recordkeeping Burden: Burden Hours:

Recordkeepers: 0.

Abstract: This form will be used by eligible applicants to apply for grants under the Ronald E. McNair Achievement Program. The Department needs this information to make grants awards to insure that proposed projects meet the requirement of regulations.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Handicapped Infants and Toddlers, Under Part H of the Education for the Handicapped Act (EHA) - Interagency Coordination Council.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Burden Hours: 855.

Responses: 57.

Recordkeeping Burden: Burden Hours: 0.

Recordkeeping: 0.

Abstract: State or local governments that have participated in the Handicapped Infants and Toddlers Program, Under Part H of the Education for the Handicapped Act (EHA), are to submit the report to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.

Title: Application for New and Continued Participation in the Bilingual Education Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or households; non-profit institutions.

Reporting Burden: Burden Hours: 800.

Responses: 40

Recordkeeping Burden: Burden Hours: 300.

Recordkeeping: 20.

Abstract: This application is used by institutions of higher education to request approval of their graduate programs of study under the Bilingual Education Fellowship Program. Information collected from the institutions will be used by the Department to award fellowships for advanced study in the fields of teacher training, program administration, research and evaluation, and curriculum development in bilingual education.

Type of Review: Extension.

Title: Demonstration of Compliance with Terms and Conditions of the Bilingual Education Fellowship Contract.

Frequency: Annually.

Affected Public: Individuals or households.

Reporting Burden: Burden Hours: 388.

Responses: 637.

Recordkeeping Burden: Burden Hours: 0.

Recordkeeping: 0.

Abstract: This form will be used by any person who has received a Bilingual Education Fellowship to demonstrate compliance with the program regulations. The Department uses this information to determine the recipients' compliance with the terms and conditions of the Bilingual Education Fellowship Agreement.

[FR Doc. 90-3150 Filed 2-9-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-662-000 et al.]

Gas Gathering Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Gas Gathering Corporation

[Docket No. CP90-662-000

February 2, 1990.

Take notice that on January 29, 1990, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP90-662-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas for Southern Union Exploration Company, *et al.* (Southern Union), under GGS's blanket certificate issued in Docket No. CP86-129-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

GGC proposes to transport, on an interruptible basis, up to 12,000 MMBtu equivalent of natural gas on a peak day for Southern Union, 4,000 MMBtu equivalent on an average day and 1,460,000 MMBtu equivalent on an annual basis. It is stated that GGC would receive the gas at an interconnection with Transgas, Inc., in St. Martin Parish, Louisiana, and would deliver equivalent volumes of gas at an interconnection with Gulf Energy Gathering and Processing Corp. in St. Martin Parish, Louisiana. It is stated that the transportation service would be effected using existing facilities and that no additional construction of facilities would be required. It is explained that the transportation service commenced January 11, 1990, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1618.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

Docket No. CP90-659-000

February 2, 1990.

Take notice that on January 29, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-659-000 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 natural gas transportation service for Rangeline Corporation (Rangeline), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a transportation service agreement dated December 1, 1989, WNG request authorization to transport up to 30, 000 Dth of natural gas per day for Rangeline under ITS Rate Schedule. WNG states that the agreement provides for it to receive the gas from various existing receipt points located in Colorado, Kansas, Missouri, Oklahoma, Texas and Wyoming and to redeliver the gas to various existing delivery points located in Kansas. WNG anticipates transporting 30,000 Dth on an average day and 10,950,000 Dth on an annual basis. Finally, WNG states that the transportation service commenced on December 1, 1989, as reported in Docket No. ST90-1421-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP90-632-000

February 2, 1990.

Take notice that on January 25, 1990, ANR Pipline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48343 filed in Docket No CP90-632-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to provide an interruptible natural gas transportation service for PSI, Inc. (PSI), under ANR's 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 on file with the Commission.

Pursuant to a transportation service agreement dated November 21, 1989, ANR requests authority to transport up to 50,000 Dth of natural gas per day for PSI. ANR states that the agreement provides for it to receive the gas at various existing points of receipt located in Louisiana, Oklahoma, Kansas, and Texas and to redeliver the gas to an existing point of delivery located offshore Louisiana. PSI has informed ANR that it expects to have the full 50,000 Dth transported on an average day and, based thereon, ANR anticipates that 18,250,000 Dth would be transported annually. ANR advises that the transportation service commenced on December 9, 1989, as reported at Docket No. ST90-1379-000, pursuant to Section 284.223(a) of the Commission's Regulations.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

Docket No. CP90-647-000

February 2, 1990.

Take notice that on January 26, 1990 Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-647-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport Natural gas for Ag Processing, Inc. (Ag Processing) under the blanket certificate issued in Docket No. CP86-631-000 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.

WNG states that it proposes to transport, on a firm basis, up to 325 Dth of natural gas per day for Ag Processing from various receipt points in Kansas and Oklahoma to various delivery points on WNG's pipeline system located in Missouri.

WNG also states that the estimated average day and annual quantities would be 325 and 118,625 Dth, respectively.

WNG further states it commenced this service on December 1, 1989, as reported in Docket No. ST90-1420-000.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Algonquin Gas Transmission

[Docket No. CP90-635-000]

February 2, 1990.

Take notice that on January 25, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP90-635-000 a request pursuant to § 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. CP89-948-000 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.

Algonquin proposes to transport natural gas on an interruptible basis for South County Gas Company (South County). Algonquin explains that service commenced December 7, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-1350-000. Algonquin further explains that the peak day quantity would be 248 MMBtu, the average daily quantity would be 248 MMBtu and that the annual quantity would be 90,520 MMBtu. Algonquin explains that it would receive natural gas for the account of South County at an existing receipt point in Lambertville, New Jersey for redelivery to South County in Washington County, Rhode Island. Algonquin states that no new facilities are required to implement the service.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. The Inland Gas Company, Inc.

[Docket No. CP90-664-000]

February 2, 1990.

Take notice that on January 30, 1990, The Inland Gas Company, Inc. (Inland), 336-338 Fourteenth Street, Ashland, Kentucky 41101, filed in Docket No. CP90-664-000 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 Salyersville Gas Company, Inc. (Salyersville), under the blanket certificate issued in Docket No. CP89-779-000, 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.

Inland states that pursuant to a transportation service agreement dated December 13, 1989, under its Rate Schedule ITS, it proposes to transport up to 500 MMBtu per day equivalent of natural gas for Salyersville. Inland states that it would transport the gas from receipt points located in Boyd and Magoffin Counties, Kentucky, and would deliver the gas to a delivery point in Magoffin County, Kentucky.

Inland advises that service under § 284.223(a) commenced December 21, 1989, as reported in Docket No. ST90-1327. Inland further advises that it would transport 100 MMBtu on an average day and 36,500 MMBtu annually.

Comment date: March 19, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP89-629-001]

February 5, 1990.

Take notice that on January 26, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP89-629-001, an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization to (1) transport natural gas for customers in New York and New England, (2) to construct and operate facilities necessary to transport and deliver such gas a new pipeline system and, (3) abandon a portion of its existing sales obligation to National Fuel Gas Corporation (National Fuel), all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

Tennessee is amending its application to delete three shippers and reduce the maximum daily quantities it had proposed to transport for four other shippers. Specifically, Tennessee is withdrawing its request to transport 14,000 Dtd for O'Brien Cogeneration Inc. V; 14,400 Dtd for Lee Mass Cogeneration Company; and 35,000 Dtd for Southern Connecticut Gas Company. In addition, Tennessee is reducing its request to transport gas for: Essex County Gas Company (from 4,000 Dtd to 2,000 Dtd); Selkirk Cogen Partners, L.P. (from 23,000 Dtd to 21,000 Dtd); Connecticut Natural Gas Corporation (from 50,000 Dtd to 35,000 Dtd); and New England Power

Company (from 74,547 Dtd to 70,000 Dtd). In addition, Tennessee will be transporting 25,000 Dtd (previously intended for MassPower, Inc.) on behalf of Orchard Gas Corporation which is now acting as agent for MassPower, Inc. Further, Tennessee is withdrawing its request to abandon a portion of its annual and monthly sales obligations under Rate Schedules CD–4 and CD–5 to National Fuel.

These changes in proposed services have resulted in a revision in the facilities deemed necessary. In particular, Tennessee intends to reduce the amount of 36 " looping on its "200" line from 79.66 miles to 74.62 miles and will not construct the 11.44 mile North Haven extension or any of the proposed looping on its "300" mainline. Tennessee does propose an additional 27.84 miles of 30 " looping of its "200" mainline and the installation of an 1,850 HP compressor addition at its Station 261 and a 1,200 HP compressor addition at its Station 266A versus the 1,650 HP and 1,000 HP additions originally proposed at those stations. Also, Tennessee desires to substitute a turbine compressor unit for the reciprocating unit it had proposed to install at its Station 254 and has increased the capacity of its proposed measurement facility at Monson, MA from 25,000 Dtd to 50,000 Dtd. The revised estimate of the cost of facilities is now $186,289,000.

Tennessee has now incorporated in the General Terms and Conditions of proposed Rate Schedules NET–EU and NET–LD a requirement that shippers will not receive gas at flow rates greater than their average daily maximun delivery rate. Also, the change in the proposed facilities have resulted in changes in the single part demand rates for service under proposed Rate Schedules NET–EU and NET–LD.

Comment date: February 26, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company

[Docket No. CP90–639–000]

February 5, 1990.

Take notice that on Janaury 26, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed an application in Docket No. CP90–639–000, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport, on a firm basis, an aggregate maximum quantity of 118,000 Dt daily on behalf of three shippers and to construct and operate pipeline facilities necessary to provide this service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Tennessee intends to receive volumes from the three shippers at a point of connection between Tennessee and the proposed facilities of Iroquois Gas Transmission System near Wright, NY and transport such volumes to delivery points designated by the shippers. The shippers, quantities and delivery points are as follows:

Shipper	Aggregate quantity (Dtd)	Delivery point and quantity (Dtd)
Boston Gas Company.	35,000	Mendon, MA, 20,000. Revere, MA, 11,200. Spencer, MA, 1,800. Leominster, MA, 1,000. Clinton, MA, 1,000.
Granite State Gas Transmission, Inc.	23,000	Mendon, MA, 23,000.
New England Power Company.	60,000	Mendon, MA, 60,000.

Tennessee intends to commence service to these shippers on November 1, 1991.

In order to perform the contemplated transportation services, Tennessee proposes to construct and operate 35.25 miles of mainline loop and lateral line loop or replacement pipe, 7,500 HP of compression additions, and metering facilities. The estimated cost of these facilities is $64,205,000. Tennessee plans to initially finance these facilities with funds on hand, funds generated internally, borrowings under revolving credit agreements, or short-term financing which will be rolled into permanent financing.

Tennessee intends to provide the proposed transportation services under either Rate Schedule NET–EU or Rate Schedule NET–LD, depending upon whether the shippers is a local distribution company or an electric generator. These rate schedules are incremental, single-part demand rates.

Comment date: February 26, 1990, in accordance with Standard Paragraph F at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP90–667–000]

February 5, 1990.

Take notice that on January 30, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–667–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Amerada Hess Corporation (Amerada), a producer, under Southern's 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 states that it would perform the proposed transportation service for Amerada pursuant to a service agreement dated November 20, 1989, under Southern's Rate Schedule IT. It is further stated that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern indicates that the service agreement provides for a maximum quantity of 85,000 MMBtu of natural gas on a peak day but Amerada anticipates requesting 61,000 MMBtu of natural gas on an average day, and accordingly, 22,265,000 MMBtu of natural gas on an annual basis.

Southern states that it would receive the natural gas at a receipt point in Eugene Island Block 57, offshore Louisiana, for delivery to its interconnection with United Gas Pipe Line Company in the same block. Southern asserts that no new facilities would be required to implement the proposed service.

Southern indicates that it commenced the transportation of natural gas for Amerada on December 1, 1989, as reported in Docket No. ST90–1069–000, for a 120-day period pursuant to § 284.223(a) of the Commission's regulations (18 CFR 284.223(a)).

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Natural Gas Pipeline Company of America

[Docket No. CP90–669–000]

February 5, 1990.

Take notice that on January 31, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–669–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Inc. (TGMI), a marketer of natural gas, under its blanket authorization issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully

set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for TGMI, pursuant to an interruptible transportation service agreement dated October 12, 1988, as amended March 29, 1989 (Agreement No. IGP–1487). The transportation agreement is effective for a primary term ending November 1, 1990, and shall continue month to month thereafter unless terminated by five days' prior notice by either party. Natural proposes to transport up to a maximum of 150,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). TGMI advised Natural that the volume anticipated to be transported on an average day is 25,000 MMBtu; and based on that average day figure, the annual volume to be transported is 9,125,000 MMBtu. Natural proposes to receive the subject gas at various points located in the states of Kansas, Louisiana, Offshore Louisiana, Oklahoma, New Mexico, Texas and Offshore Texas. It is stated that the delivery points are located in Louisiana, Offshore Louisiana, Texas and Offshore Texas. Natural avers that no new facilities are required to provide the proposed service.[1]

It is explained that the proposed service is currently being performed pursuant to the 120-day self-impementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on December 1, 1989, as reported in Docket No. ST90–1689–000.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Algonquin Gas Transmission Company

[Docket No. CP90–630–000

February 5, 1990.

Take notice that on January 25, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP90–630–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Citizens Gas Supply Corporation (Citizens), a marketer of natural gas, under its blanket authorization issued in Docket No. CP89–948–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin would perform the proposed interruptible transportation service for Citizens, pursuant to an interruptible transportation service agreement dated November 6, 1989. The transportation agreement is effective for a term through September 15, 1999, and month to month thereafter until terminated by either party on thirty days written notice. Algonquin proposes to transport up to 50,000 MMBtu on a peak and average day; and on an annual basis approximately 18,250,000 MMBtu of natural gas for Citizens. Algonquin proposes to transport the subject gas from existing points of receipt located in the states of New Jersey and Massachusetts. Algonquin states that it will then transport and redeliver the gas, less fuel and unaccounted for line loss, to the City of Norwich Board of Public Utility Commissioners in New London, County, Connecticut. Algonquin states that no new facilities will be required to provide this transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Algonquin commenced such self-implementing service on November 22, 1989, as reported in Docket No. ST90–1165–000.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Algonquin Gas Transmission Company

[Docket No. CP90–636–000]

February 5, 1990.

Take notice that on January 25, 1990, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP90–636–000 a request, as supplement on January 30, 1990, and February 1, 1990 Pursuant to §§ 157.205 and 284. 223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for PSI, Inc. (PSI), a marketer, under Algonquin's blanket certificate issued in Docket No. CP89–948–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that pursuant to a transportation agreement dated November 30, 1989, it proposes to receive up 60,000 million Btu per day from existing points of receipt located in New Jersey, New York, Connecticut and Massachusetts and redeliver the gas, less fuel and unaccounted for line loss, for PSI into the facilities of Bay State Gas Company (Bay State) in Plymouth, Norfolk and Bristol Countries, Massachusetts and the facilities of The Southern Connecticut Gas Company (Southern Connecticut) in New Haven County, Connecticut. Algonquin estimates that the maximum day, average day and annual volumes each deliverable to Bay State and Southern Connecticut would be 30,000 million Btu, 30,000 million Btu, and 10,950,000 million Btu, respectively. It is stated that on December 7, 1989, Algonquin initiated 120-day transportation services for PSI into the facilities of Southern Connecticut and Bay State under § 284.223(a), as reported in Docket Nos. ST90–1351–000 and ST90–1352–000, respectively.

Algonquin further states that no facilities need be constructed to implement the service. Algonquin indicates that the primary of the agreement expires on November 13, 1990, but that the service would be continued on a month-to-month basis until terminated by thirty days written notice by either party. Algonquin proposes to charge rates and abide by the terms and conditions of its Rate Schedule AIT–1.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–663–000]

February 5, 1990.

Take notice that on January 30, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), Post Office Box 1188, Houston, Texas 77252, filed in Docket No. CP90–663–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Gas Marketing, Inc. (Enron), a natural gas marketer, under its blanket authorization issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which

[1] Natural states that Receipt Point No. 885 has been included in the transportation agreement at TGMI's request. According to Natural, this point was originally constructed as a facility to be utilized solely for transportation authorized by section 311 of the NGPA and subpart B of part 284. Natural states that it currently has no authorization to utilize this point and that this point will not be used under this transportation agreement until appropriate authorization has been obtained.

is on file with the Commission and open to public inspection.

Northern would perform the proposed interruptible transportation service for Enron, pursuant to an interruptible transportation service agreement date November 28, 1989. The transportation agreement is for a primary term of two years from the date of initial delivery and month to month thereafter unless cancelled by thirty days prior notice by either party. Northern proposes to transport on a peak day up to 20,000 MMBtu per day; on an average day up to 15,000 MMBtu; and on an annual basis 7,300,000 MMBtu of natural gas for Enron. Northern proposes to receive the subject gas a various points located in the states of Iowa, Kansas, Minnesota, New Mexico, Oklahoma, South Dakota an Texas. It is stated that the points of delivery are located in the states of Texas and Wisconsin. Northern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northern commenced such self-implementing service on December 1, 1989, as reported in Docket No. ST90-1043-000.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Transcontinental Gas Pipe Line Corporation

[Docket No. CP90-661-000]

February 5, 1990.

Take notice that on January 29, 1990, Transcontinental Gas Pipe Line Corporation (Transco) Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-661-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Elf Aquitaine, Inc. (Elf Aquitaine), under Transco's blanket certificate issued in Docket No. CP88-328-000, 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.

Transco requests authorization to transport, on an interruptible basis, up to a maximum of 1,460,000 dekatherms of natural gas per day for Elf Aquitaine from receipt points located in Louisiana, Offshore Louisiana and Offshore Texas to delivery points located in Pennsylvania, Mississippi, Virginia, South Carolina, New York, New Jersey, North Carolina, Delaware, Georgia, Louisiana and Offshore Texas. Transco anticipates transporting 50,000 dekatherms of natural gas on an average day and an annual volume of 18,250,000 dekatherms.

Transco states that the transportation of natural gas for Elf Aquitaine commenced December 1, 1989, as reported in Docket No. ST90-1353-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regualtions and blanket certificate issued to Transco in Docket No. CP88-328-000.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Natural Gas Pipeline Company of America

[Docket No. CP90-617-000]

February 5, 1990.

Take notice that on January 25, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP90-617-000 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 natural gas transportation service for Mitchell Marketing Company (Mitchell), a marketer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a transportation agreement dated November 21, 1989, Natural requests authority to transport up to 30,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provisions of its Rate Schedule ITS) for Mitchell. Natural states that the agreement provides for it to receive the gas at various existing points of receipt located in Texas and to redeliver the gas to various existing points of delivery located in Kansas, Iowa, Oklahoma, Missouri, Nebraska, Texas, offshore Texas, and Illinois. Mitchell has informed Natural that it expects to have only 10,000 MMBtu of gas transported on an average day and, based thereon, Natural estimates that 3,650,000 MMBtu of gas would be transported annually. Natural advises that the transportation service commenced on December 1, 1989, as reported in Docket No. ST90-1139-000, pursuant to Section 284.223 of the Commission's Regulations.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Williams Natural Gas Company

[Docket No. CP90-648-000]

February 5, 1990.

Take notice that on January 26, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-648-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to provide a firm transportation service for Vesta Energy Company (Vesta) under its blanket certificate issued in Docket No. CP86-631-000 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.

WNG states that it would receive the gas for Vesta at existing points of receipt in Oklahoma and Kansas, and would deliver the gas at existing interconnections in Oklahoma and Kansas.

WNG states that the maximum daily, average daily and annual quantities that it would transport for Vesta would be 1,170 dt equivalent of natural gas, 1,170 dt equivalent of natural gas and 427,050 dt equivalent of natural gas, respectively.

WNG indicates that in a filing made with the Commission in Docket No. ST90-1427-000, it reported that transportation service on behalf of Vesta commenced on December 1, 1989, under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Northwest Pipeline Corporation

[Docket No. CP90-656-000]

February 5, 1990.

Take notice that on January 29, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-656-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon firm service in part, reallocate volumes, and replace delivery facilities for Northwest Natural Gas Company (Northwest Natural), under the blanket certificate issued in Docket No. CP82-433-000, 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.

Northwest proposes to (1) partially abandon existing maximum daily delivery quantities (MDDQ) for firm service at certain delivery points to

Northwest Natural, (2) reallocate MDDQ volumes from the Portland West/Scappoose Meter Station to the North Vancouver Meter Station for firm service to Northwest Natural, (3) partially abandon existing North Vancouver Meter Station facilities, and (4) construct and operate upgraded facilities at the North Vancouver Meter Station.

Northwest states that it is currently authorized by Commission order issued September 30, 1982, in Docket No. CP82-452-000 to provide Northwest Natural with firm gas sales service under Rate Schedule ODL-1 of Northwest's FERC Gas Tariff, Volume No. 1 at a contract demand level of 2,860,440 therms, with the sum of the delivery point MDDQ's totalling 3,831,440 therms. However, it is explained, Northwest and Northwest Natural entered into an ODL-1 service agreement dated October 1, 1988, which reduced sales contract demand to 60,000 therms. It is stated that the remaining 2,800,440 therms (280,044 MMBtus) of Northwest Natural's contract demand was converted to firm transportation contract demand under a Rate Schedule TF-1 transportation agreement dated September 29, 1988. It is stated that, effective November 1, 1989, Northwest Natural reduced its transportation contract demand by 40,000 MMBtus to a level of 240,044 MMBtus per day. It is further stated that, pursuant to the terms of the transportation agreement, the volumes delivered to any given point under the transportation agreement and the sales agreement, in combination, cannot exceed the MDDQ set forth in the ODL-1 sales service agreement.

Northwest states that Northwest Natural has agreed to a reduction of 535,783 therms (53,578 MMBtus) in the total sum of its delivery point MDDQ's, consistent with its November 1, 1989, reduction in contract demand. Accordingly, Northwest proposes to partially abandon Northwest Natural's existing MDDQ's by 535,783 therms, with reductions taken at the Portland West/Scappoose Meter Station, the Portland Northeast Meter Station, and the Portland Southeast Meter Station.

Additionally, in response to a request by Northwest Natural, Northwest proposes to reallocate 50,000 therms of Northwest Natural's remaining MDDQ's at the Portland West/Scappoose Meter Station to the North Vancouver Meter Station.

Further, Northwest proposes to upgrade the existing North Vancouver Meter Station, at Northwest Natural's request, to facilitate the reallocation of MDDQ from the Portland West/Scappoose Meter Station. Northwest proposes to retire the existing four-inch positive displacement meter, the orifice meter and the associated meter runs at the North Vancouver Meter Station and proposes to replace those facilities with two six-inch orifice meters and meter runs and two two-inch regulators. The cost of upgrading the metering facilities is estimated to be $32,700.

Comment date: March 22, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Southern Natural Gas Company

[Docket No. CP90-666-000]

February 5, 1990.

Take notice that on January 30, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-666-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Ultramar Oil and Gas Limited (Ultramar), a producer of natural gas, under Southern's 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 which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 6,000 MMBtu equivalent of natural gas on a peak day, 6,000 MMBtu equivalent on an average day, and 2,190,000 MMBtu equivalent on an annual basis for Ultramar. It is stated that Southern would receive the gas at existing points on Southern's system in Louisian, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes at an existing point on Southern's system in Aiken County, South Carolina. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced December 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-1074.

Comment date: March 22, 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. 90-3167 Filed 2-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10429-001-NY]

Riverat Glass & Electric, Inc.; Surrender of Preliminary Permit

February 6, 1990.

Take notice that Riverat Glass and Electric, Inc., permittee for the West Branch Project located on the West Branch of the Ausable River in Essex and Clinton Counties, New York, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 25, 1988, and would have expired on December 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on January 23, 1990, and the preliminary permit for Project No. 10429 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3169 Filed 2-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4304-003-ME]

Bangor Hydro-Electric Co.; Surrender of Exemption

February 6, 1990.

Take notice that Bangor Hydro-Electric Company, exemptee for the Columbia Falls Project No. 4304 located on the Pleasant River in the Town of Columbia Falls, Washington County, Maine, has requested that its exemption from licensing be terminated. The exemption was issued on April 9, 1981. The exemptee states that hydro operations have been terminated and will not be resumed. The exemptee further states that the dam has been breached for the purpose of facilitating the upstream migration of Atlantic Salmon and that it plans to convey the dam and associated land rights to the State of Maine.

The exemptee filed the request on December 12, 1989, and the exemption for Project No. 4304 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 90-3168 Filed 2-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-3-25-000, TM90-4-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 6, 1990.

Take notice that on January 30, 1990, Mississippi River Transmission Corporation (MRT) tendered for filing the tariff sheets listed below to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective March 1, 1990:

Forty-First Revised Sheet No. 4
Sixteenth Revised Sheet No. 4A
Seventh Revised Sheet No. 4A.1
Seventh Revised Sheet No. 4A.2
Fourth Revised Sheet No. 4A.3
Fourth Revised Sheet No. 4A.4
Third Revised Sheet No. 4A.5

MRT states that the purpose of the instant filing is to reflect MRT's quarterly purchased gas cost adjustment and changes in fixed take-or-pay charges incurred from pipeline suppliers. The overall cost impact of the PGA on MRT's jurisdictional customers is a decrease of approximately $3.7 million for the subject three month period. Specifically, the impact of the instant filing on MRT's Rate Schedule CD-1 rates is a decrease of $.017 per MMBtu in the Demand Charge D-1 component, an increase of .57 cents per MMBtu in the Demand Charge D-2 component, and a decrease of 21.32 cents per MMBtu in the commodity charge. The single part rate under Rate Schedule SGS-1 reflects a decrease of 20.91 cents per MMBtu.

MRT states that pursuant to Commission orders in prior MRT filings concerning the flowthrough of monthly fixed take-or-pay charges billed to MRT by United Gas Pipe Line Company (United), Natural Gas Pipeline Company of America (NGPL) and Trunkline Gas Company (Trunkline), MRT is required to revise its own take-or-pay flowthrough filings to track the fixed take-or-pay charges billed to MRT. Consequently, included in the instant filing are tariff sheets reflecting revised fixed take-or-pay charges applicable to each of MRT's jurisdictional customers. Such tariff sheets also reflect a reconciliation of take-or-pay amounts actually paid to United, NGPL, and Trunkline by MRT compared to take-or-pay amounts collected by MRT from its jurisdictional customers. The cost impact of all revisions on MRT's jurisdictional customers is a decrease of approximately $127,000 for the quarter.

MRT states that a copy of the filing is being mailed to each of MRT's jurisdictional customers and to the State Commission's of Arkansas, Illinois, and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 13, 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. 90-3170 Filed 2-9-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-009]

Truckline Gas Co.; Compliance Filing

February 6, 1990.

Take notice that on January 30, 1990 Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets as listed on appendices A and B, attached to the filing.

Trunkline states that on November 13, 1989 Trunkline filed revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 in the above-referenced proceeding in compliance with the October 31, 1989 Commission "Order Rejecting Tariff Sheets" and an "Order Granting in Part and Denying in Part Rehearing". By Letter Order dated December 8, 1989 the Commission approved Trunkline's November 13, 1989 Compliance Filing.

Trunkline further states that on November 15, 1989 Trunkline filed a request for rehearing of the Commission's October 31, 1989 Orders. The Commission issued an "Order Granting Rehearing" on January 26, 1990 wherein Ordering Paragraph (B) allows Trunkline to refile the tariff sheets rejected by the Commission's October 31, 1989 rejection order.

Trunkline states that the tariff sheets submitted herewith include the same

tariff sheets to be effective November 1, 1989 as previously were rejected by the Commission. Additionally, Trunkline also submits revised tariff sheets which reflect revised rates in its quarterly PGA filing effective December 1, 1989 in Docket No. TQ90–1–30–000 and the Gas Research Institute (GRI) adjustment in Docket No. TM90–5–30–000 effective January 1, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before February 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–3171 Filed 2–9–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–79–NG]

Chevron Natural Gas Services, Inc.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting blanket authorization to import Canadian natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Chevron Natural Gas Services, Inc. (CNGS), blanket authorization to import Canadian natural gas. The order issued in FE Docket No. 89–79–NG authorizes CNGS to import up to 73 Bcf of Canadian natural gas during the two-year term.

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, February 6, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3263 Filed 2–9–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–31–NG]

First Energy Associates; Conditional Order Granting a Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, DOE.

ACTION: Notice of a conditional order granting a long-term authorization to import natural gas from Canada

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order granting First Energy Associates, A Limited Partnership (FEA), a long-term authorization to import natural gas from Canada. The conditional order authorizes FEA to import up to 13,000 Mcf per day and a total of 71,227 MMcf of Canadian natural gas from Western Gas Marketing Limited, over a 15-year period beginning on the date of first delivery.

The authorization is conditioned upon entry of a final opinion and order by the DOE after review by the DOE of the environmental analysis of the transportation facilities related to this import prepared by the Federal Energy Regulatory Commission and the completion by the DOE of its National Environmental Policy Act responsibilities.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC (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, February 5, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–3264 Filed 2–9–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders for Week of November 27 Through December 1, 1989

During the week of November 27 through December 1, 1989 the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

LaJet, Inc., et al., 11/29/89, KRO–0470

The DOE issued a Remedial Order to LaJet, Inc. (LaJet), LaJet Petroleum Company (LPC) and Texas Napco, Inc. (Texas Napco). In the Remedial Order, the DOE found that during the months of May through September 1977, LaJet violated the entitlements reporting regulations codified at 10 CFR 211.66 and 211.67 and the circumvention regulation set forth at 10 CFR 205.202. Specifically, the DOE found that LaJet entered into a series of processing agreements with the Kern County Refinery, Inc. (Kern), a firm with complete exception relief from the entitlements program. The DOE found that the sole purpose of these processing agreements was to allow Kern to report volumes of crude oil refined by LaJet as processed for the account of Kern and thereby to avoid the entitlements purchase obligations associated with those volumes. The DOE found that despite the purported transfer of legal title to the crude oil to Kern, the primary functions of ownership of the crude oil remained at all times with LaJet. The DOE therefore concluded (1) that LaJet was not the owner of the crude oil for regulatory purposes; (2) that the processing agreements were sham transactions that must be disregarded in applying the entitlements regulations; and (3) that LaJet circumvented the clear intent of the DOE regulations by using Kern as a title holder of the crude oil for the sole purpose of avoiding its entitlements obligations. In determining LaJet's refund obligation, the DOE amended the PRO calculation to take into account the runs credits and SRB benefits that LaJet would have received if it had reported the crude oil. In determining LaJet's total runs to stills for the purpose of calculating its SRB benefits, the DOE included volumes of crude oil that LaJet failed to report as a result of sham processing agreements with the Young Refinery Company. *See LaJet, Inc./Economic Regulatory Administration*, 19 DOE ¶ _____ (November 15, 1989). These changes resulted in a revised violation amount of $3,513,474, plus interest. The DOE also found that LPC and Texaco Napco were jointly liable with LaJet for this violation amount under general corporate law

principles of successor liability, under equitable principles known as the "trust fund doctrine," and on the grounds that LPC constituted a "mere continuation" of LaJet's business.

Request for Exception

Castle Oil Company, 11/28/89, KEE-0178

Castle Oil Company (Castle) filed an Application for Exception from the requirement that it file Form EIA-782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting burden in a way that is significantly different from the burden borne by similar reporting firms. Accordingly, exception relief was denied.

Refund Applications

Atlantic Richfield Company/Al's Arco, et al., 12/1/89, RF304-2678, et al.

The DOE issued a Decision and Order concerning fifty Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled $97,178, including $24,538 in accrued interest.

Atlantic Richfield Company/Cooper Industries, et al., 11/30/89, RF304-2869, et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund filed by an end-user, retailers or resellers of refined petroleum products covered by a Consent Order that the DOE entered into with Atlantic Richfield Company. Each applicant submitted information indicating the volume of its purchases from ARCO. In thirty of these claims, the applicants were eligible for a refund below the small claims threshold of $5,000. In the remaining nineteen claims, each of the applicants elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $107,612, representing $80,251 in principal and $27,361 in accrued interest.

Atlantic Richfield Company/Hofman's Atlantic, et al., 11/30/89, RF304-7498, et al.

The DOE issued a Decision and Order approving thirty Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Twenty-five of the applications were granted under an applicable small claims injury presumption. The five remaining applications were filed by mid-level resellers and retailers that elected to limit their refund to 41% of the volumetric amount. The refunds granted in this Decision totalled $220,714, including $55,731 in accrued interest.

Atlantic Richfield Company/United Building Supply Co. Inc., et al., 12/1/89, RF304-8734, et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their purchases and were end-users or reseller/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $90,182 including $22,774 in accrued interest.

Behne Truck Line, et al., 12/1/89, RF272-19020, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to twenty-three applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $45,887.

City of Colorado Springs, Dept. of Utilities, 11-29-89, RF272-51086

The DOE's Office of Hearings and Appeals considered and granted an application for a Subpart V crude oil refund filed by the Colorado Springs Department of Utilities. The total refund granted was $13,700.

Commercial Carrier Corporation, 11/30/89, RF272-34106, RD272-34106

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Commercial Carrier Corporation (Commercial), a common carrier end-user of petrolum products. Commercial used refined petroleum products in the operation of trucks for motor freight transportation; that usage was unrelated to the petroleum industry. In reaching its determination, the DOE rejected the Objection to the applicant's claim submitted by a group of States and denied the States' Motion for Discovery. The DOE held that neither industry-wide data nor a general discussion on how elasticity of supply and demand affect cost absorption in various industries is sufficient to rebut the presumption of injury for end-users outside of the petroleum industry. The DOE also stated that the mere contention that an industry had the ability to pass through overcharges is not convincing evidence that a particular claimant was likely in fact to have passed through overcharges. Accordingly, Commercial was granted a refund of $33,787.

Edgar C. Bowers, 11/30/89, RF272-23521

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Edgar C. Bowers, the owner of Interstate Asphalt Company, based on his purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Bower demonstrated the volume of his claim by consulting contemporaneous records. Bowers was an end-user of the products he purchased and was therefore presumed injured by the DOE. Accordingly, the DOE granted Bowers $29,447.

Exxon Corporation/Brandywine Exxon et al., 11/29/89 RF307-16 et al.

The DOE issued a Decision and Order concerning 8 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refund granted in this Decision is $10,015 ($8,050 principal plus $1,965 interest)

Exxon Corporation/Lankford & Shea, Inc., 11/29/89, RF307-10077

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding regarding Lankford & Shea, Inc. (L & S). In *Exxon Corp./American Intl. Rent-A-Car*, 19 DOE ¶ 89,293 (1989), L & S Case No. RF307-8313, was granted a refund of $2,182 ($1,754 principal plus $428 interest) based on its purchases of Exxon refined petroleum products. However, the DOE determined that because the claimant in this case, Francis V. Shea, was not the owner of L & S during the consent order period, he was not the rightful recipient of this refund. Accordingly, the refund granted to this claimant was rescinded.

Exxon Corporation/Lyle Smith et al., 11/29/89, RF307-8025 et al.

The DOE issued a Decision and Order concerning ten Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a reseller of Exxon products whose allocable share is greater than $5,000. Instead of making

an injury showing to receive its full allocable share, each applicant elected to limit its claim to $5,000 or 40 percent of its allocable share, whichever is greater. The sum of the refunds granted in this Decision is $97,230 ($78,151 principal plus $19,079 interest).

Exxon Corporation/Midtown Exxon Service, 11/29/89, RF307-3227

The DOE issued a Decision and Order in the Exxon Corporation special refund proceeding denying an application for refund filed by Tommy Sasser, the owner of Midtown Exxon Service. The DOE found that Sasser is ineligible to receive a refund because he was not the owner of Midtown during the consent order period. Accordingly, this application was denied.

Exxon Corporation/Parkside & Oakland Exxon et al., 11/29/89, RF307-8019 et al.,

The DOE issued a Decision and Order concerning six Applications for Refund filed by Wayne Hubscher in the Exxon Corporation special refund proceeding. Because the firms were under common ownership during the consent order period, and because their allocable share exceeds $5,000, the applications were consolidated to apply the presumption of injury. Instead of making an injury showing to receive his full allocable share, Hubscher elected to limit his claim to $5,000 or 40 percent of his allocable share, whichever was greater. In this case, $5,000 was greater. The total refund granted in this Decision is $6,221 ($5,000 principal plus $1,221 interest).

Exxon Corporation/Robert B. Morris et al., 11/28/89, RF307-3608 et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased products indirectly from Exxon, and was supplied by a firm that either (i) did not apply for an Exxon refund, (ii) had been granted a refund under a presumption of injury, or (iii) indicated in its Exxon refund application that it did not intend to make a showing of injury. In accordance with prior Decisions, the claims of the applicants were therefore considered under the procedures used to evaluate direct purchase claims. Each applicant was a retailer whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $17,411 ($13,995 principal plus $3,416 interest).

Exxon Corporation/West Virginia Turnpike Commission, et al., 11/28/89, RF307-8500 et al.

The DOE issued a Decision and Order concerning 118 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased products directly from Exxon and was a retailer of Exxon products whose allocable share is less than $5,000, or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $114,306 ($91,879 principal plus $22,427 interest).

Gulf Oil Corporation/Crozier Oil Company, 11/27/89, RF300-5096

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corproation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision, including both principal and interest, is $6,690.

Gulf Oil Corporation/Dawson and Yaeger, Inc., Dawson and Yaeger, 12/01/89, RF300-7201, RF300-7202

The DOE issued a Decision and Order granting two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the firms were under common ownership during the consent order period, the DOE consolidated these Applications when applying the presumption of injury. The total refund granted in this Decision, including accrued interest, is $4,467.

Gulf Oil Corporation/Earl E. Duffey, et al., 11/30/89, RF300-9611, et al.

The DOE issued a Decision and Order concerning 26 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $57,402.

Gulf Oil Corporation/Earl's Friendly Gulf Service, et al., 11/30/89, RF300-10517, et al.

The DOE issued a Decision and Order concerning 23 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $39,251.

Gulf Oil Corporation/Interstate 40 Gulf, et al., 12/01/89, RF300-6622, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $10,050.

Gulf Oil Corporation/J. McGee Horton, Inc., W. K. Hobbs, Inc., 11/28/89, RF300-5048, RF300-5050

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including both principal and interest, is $13,594.

Gulf Oil Corporation/L. M. Horne, 11/28/89, RF300-9699

The DOE issued a Decision and Order concerning an Application for Refund submitted by L. M. Horne in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision, including accrued interest, is $94.

Gulf Oil Corporation/Love's Gulf, et al., 12/1/89, RF300-10007, et al.

The DOE issued a Decision and Order concerning six Applications for Refund submitted by retailers in the Gulf Oil Corporation special refund proceeding. The applications were approved using the small claims presumption of injury. The total refund granted in this Decision, including accrued interest, is $8,764.

Gulf Oil Corporation/Miller Transporters, Inc., et al., 11/27/89, RF300-9582, et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $108,327.

Gulf Oil Corporation/Mulberry Grocery, et al., 11/28/89, RF300-978, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including accrued interest, is $6,763.

Gulf Oil Corporation/Petrolane Incorporated, 11/30/89, RF300–9400

The DOE issued a Decision and Order granting the Application for Refund submitted by Petrolane Incorporated in the Gulf Oil Corporation special refund proceeding. In order to demonstrate the level of injury Petrolane incurred, the firm submitted cost banks and a competitive disadvantage showing which was based on national average petroleum prices collected by the Energy Information Administration (the EIA prices). The DOE rejected Petrolane's usage of the EIA prices, because *Platt's Petroleum Handbook* prices, which are market-specific and therefore preferable to the EIA prices, were available for a number of Petrolane's major purchase locations. Using *Platt's* prices for comparison purposes, the DOE determined that Petrolane suffered a competitive disadvantage in 31% of its Gulf purchases. It therefore granted Petrolane a refund amount of 31% of its allocable share plus interest. The total refund granted was $92,257.

Gulf Oil Corporation/T.J. Bartlett Company, et al., 12/1/89, RF300–4319, et al.

The DOE issued a Decision and Order concerning five Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by reseller/consignees of covered Gulf products. Each was awarded the largest possible refund allowable under the presumptions of injury on its combined allocable shares for its reseller gallons and 10 percent of its consignee gallons. The sum of the refunds granted, including interest, equals $31,716.

Gulf Oil Corporation/Wyche Oil Co., et al., 11/29/89, RF300–5919, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applications was approved using a presumption of injury. The sum of the refunds granted in this Decision; including accrued interest, is $21,507.

Material Service Corporation, 11/29/89, RF272–24967.

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Material Service Corporation—an operator of coal mines, stone quarries, and cement factories—based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The applicant demonstrated the volume of its claim, 54,711,264 gallons, by consulting actual records and by using a reasonable estimate of its purchases. The applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The amount of the refund granted in this Decision is $43,769.

Murphy Oil Corporation/Graham Oil Company, et al., 12/1/89, RF309–263, et al.

The DOE issued a Decision and Order denying refunds to seven claimants in the Murphy Oil Corporation special refund proceeding. Each applicant had been tentatively identified as a spot purchaser of Murphy products after an examination of its purchase volume schedule. Each applicant was then notified of this determination by the OHA and either confirmed that it had been a spot purchaser of Murphy products, stated that it was unable or unwilling to rebut the presumption, or did not respond to repeated inquiries. Accordingly, the seven applications were denied.

Murphy Oil Corporation/Willifords Spur Station, et al., 11/27/89, RF309–1302, et al.

The DOE issued a Decision and Order granting refunds to 17 applicants in the Murphy Oil Corporation special refund proceeding. In this Decision, each of the applicants was either an end-user of Murphy petroleum products or a reseller receiving a refund under the small claims injury presumption, as set forth in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). Accordingly, each applicant received a full volumetric refund. The total purchase volume approved in this Decision was 36,620,889 gallons, and the total of the refunds granted was $36,544 (comprised of $29,920 in principal and $6,624 in interest).

Power Pak Company/Cando Oil & Gas Co., et al., 11/29/89, RF241–4, et al.

The DOE issued a Decision and Order concerning six Applications for Refund in the Power Pak Company special refund proceeding. Cando Oil & Gas Co. (Cando) was a reseller/retailer that applied for a refund based upon allocation violations on the part of Power Pak. The remaining five applicants were Cando's consignees. Each of the consignees was also injured because it experienced a loss of sales which was translated directly into a corresponding decline in commission revenues. Cando documented the volume of its base-period purchases (and those of its consignees) from Power Pak. However, Cando was not able to document the profit margin it had experienced during the consent order period. So the DOE adopted the average domestic retail motor gasoline sales profit margin for the Houston, Texas area reported by *Platt's Oilmanac*—as reduced by overhead and transportation expenses. The DOE concluded that the applicants should receive refunds totalling $23,838, representing $13,253 in principal and $10,585 in accrued interest.

River Arts Apts., et al., 11/29/89, RF272–22967, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 13 claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $23,432.

Shelby County Schools, 11/27/89, RA272–17.

The DOE issued a Supplemental Order to Shelby County Schools, one applicant in *Fleet Lines, Incorporated* in the crude oil Subpart V proceeding. It was determined that the refund granted to Shelby in that Decision was based on an incorrect gallonage total. Accordingly, Shelby was granted a corrected refund amount of $2,076 based on the appropriate gallonage total.

Shell Oil Company/Kenneth E. Bonestroo, North Branch Oil Co., 11/27/89, RF315–6727, RF315–8340.

The DOE issued a Supplemental Order rescinding its prior determination in *Shell Oil Company/Tygart's Shell Service*, 19 DOE ¶ 85,075 (1989) (*Tygart's Shell*) with respect to the Application for Refund filed by North Branch Oil Co. (Case No. RF315–1698), and granting a refund to Kenneth E. Bonestroo. Mr. Bonestroo owned North Branch during the refund period and sold North Branch in 1986 in a sale of specific assets. The DOE determined that under these circumstances Kenneth E. Bonestroo was the rightful recipient of any refund granted on North Branch's covered purchases. The total volume approved in this Supplemental Order was 16,239,853 gallons, and the refund granted was $4,447 (comprising $3,670 in principal and $777 in interest).

Shell Oil Company/Ramelli's Shell, et al., 11/28/89, RF315–4204, et al.

The DOE issued a Decision and Order granting 82 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the Applicants

purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was $98,583 ($81,329 principal plus $17,209 interest).

Shell Oil Co./The Wemett Corporation, 12/1/89, RF315-8331.

The Department of Energy issued a Supplemental Order rescinding a refund of $1,406 that had been granted to The Wemett Corporation in the Shell Oil Company special refund proceeding on November 9, 1989. Pending resolution of a conflicting refund claim, these funds will not be paid to the Wemett Corporation.

Trade And Transport, Inc., 12/1/89, RD272-7644, RF272-7644.

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Trade and Transport, Inc. (T&T), a foreign ocean carrier, based on its domestic purchases of refined petroleum products during the period from August 19, 1973 through January 27, 1981. A group of twenty-eight States and two Territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the application. The States argued that: (1) as a matter of law, foreign firms such as T&T were never intended to benefit under DOE's price control program, and (2) ocean carriers in foreign commerce conventionally added bunker fuel surcharges to their shipping tariffs to recoup increased fuel costs and thus, as a factual matter, were not injured as a result of the crude oil overcharges. The DOE determined that the arguments advanced by the States were insufficient to rebut the presumption of end-user injury and that T&T should receive a refund. In addition, the States filed a Motion for Discovery, which was denied. The refund granted in this Decision is $57,074.

Dismissals

The following submissions were dismissed:

Name	Case
Bercume's Shell	RF315-131
Brown's Grocery	RF307-2022
Carnell Southside Service Station	RF307-2080
Central Motor Express, Inc.	RF272-76514
Chambers Exxon	RF307-2109
Childer's & Temple Mercantile Co.	RF307-2011
City Cab of Tarboro	RF307-2100
City of Riverview	RF272-75921
Cooktown Exxon	RF307-5846
Couch Exxon	RF307-2085
County of Burlington	RF272-75690
D&J Exxon	RF307-2084
Dewey Grocery & Station	RF307-2059
Embry Hills Exxon	RF307-2102
Enright's Oil Service	RF304-7535
Four Way	RF307-2015
Franklin's Service Station	RF307-5850
Glendale Shell	RF315-1321
	RF315-3392
Hi Lo Service	RF307-2078
Huck's Exxon	RF307-7189
Jeff M. Richman	RF300-10564
Jenny's Exxon	RF307-5839
Kentland Exxon	RF307-6860
Lake Street Exxon	RF307-5838
Little David's Service Station	RF307-5843
Napier Shell	RF315-1629
Newby Oil Company	RF315-4187
Russ Gulf Service Center	RF300-8589
Sassor Oil	RF307-3676
Smalley Transportation Co.	RF272-75666
Solar Gas, Inc.	RF300-3090
Stage Road Exxon	RF307-2111
Syspal, Inc.	RF307-5840
The F&S Oil Company	RF315-237
Tommy's Exxon	RF307-5851
Turpin's Service Station	RF307-5841
Watson's Exxon	RF307-2006
I-20 Exxon Service Center	RF307-5845

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: February 2, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-3265 Filed 2-9-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3723-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) printed below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before February 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION: This notice supplements the **Federal Register** notice published on February 6, 1990 (55 FR 4008).

Office of Water

Title: Information on Dioxin Discharges from Pulp and Paper Mills; ICR No. 1555.01). This ICR requests clearance for a new collection of information.

Abstract: Pulp and paper mills are believed to be a significant source of dioxin and furan discharges, which are believed to be harmful to human health and persistent in the environment, to surface waters. This ICR provides for the collection of information that EPA needs in order to make informed decisions on modification of the mills' wastewater discharge permits.

Information on Dioxin Discharges From Pulp and Paper Mills Supporting Statement

A. Justification

1. Need for the Information Collection

(a) *Background.* The formation of dioxins and furans in the bleaching of wood pulp is of concern to the Environmental Protection Agency (EPA) because of these compounds' high toxicity. 2,3,7,8-tetrachlorodibenzo-p-dioxin (2378-TCDD) has demonstrated a variety of toxic effects (including death, carcinogenicity, teratogenicity and immunotoxicity) in acute and chronic exposure studies of animals. Much less information is available on the effects to humans of exposure to chlorinated dioxins and furans. 2378-TCDD is considered a probable human carcinogen under EPA's classification scheme. In addition, dioxins are extremely persistent in the environment, with degradation processes estimated to have half-lives of ten years or longer.

EPA studies (National Dioxin Study, National Bioaccumulation Study) have indicated that detectable levels of dioxin have been observed in fish tissue collected from water bodies receiving wastewater from pulp and paper mills which use chlorine for bleaching. As a result of these findings, EPA, in cooperation with the pulp and paper industry, conducted a study of 104 mills throughout the country to determine the

nature and extent of dioxin discharges from these plants.

Previous studies, however, were not designed to adequately or systematically evaluate the level of dioxin in fish and shellfish in receiving waters below individual pulp and paper mills. Therefore, they do not always establish the level of risk to consumers, nor do they always provide the level of specific information needed to evaluate the need to modify an individual mill's permit to discharge wastewater (or the permit of the Public Owned Treatment Works (POTW) to which the mill discharges its wastewater). Consequently, EPA is submitting this ICR so that specific effluent testing and in-stream biomonitoring data can be collected from mills that are candidates for permit modification (or whose POTW is a candidate) because of the environmental concerns associated with these pollutants.

Specifically, the information collected by the 104 mill study focused primarily on submission of existing information on dioxin/furans in wastewater, sludges, pulp, process raw materials/additives, and sample/analysis of a 5-day composite from effluent, sludge and pulp from each bleach line with the plant. The National Bioaccumulation study focused on fish tissue samples. The primary purpose of the data was for the establishment of effluent guidelines and for permit modifications. However, some Regions found that the data collected from this study were not adequate to make decisions necessary for modification of certain individual permits to include specific dioxin/furan limits. They found that existing data was not available (i.e., no fish tissue or ambient stream data) or the effluent analysis was not sufficient to make adequate determinations. Therefore, this ICR covers collecting information only in those cases where the 104 mill and bioaccumulation studies did not yield sufficient data to make sound permit modification decisions.

(b) *Authority.* Section 308 of the Clean Water Act provides the Administrator the authority to require the owner or operator of any point source to maintain records, make reports, conduct monitoring and/or sampling, and provide any other information which may reasonably be required as necessary to carry out the objectives of the Act. Objectives include, but are not limited to: (1) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance, (2) determining whether any person is in violation of any such limitation, prohibition or standard or (3) any requirement established by 305, 311, 402, 404 (relating to State permit programs), 405 and 504 of the Act.

2. Description and Practical Utility of the Information Collection Activity

(a) *Description of the Information Collection Activity.* Respondents consist of those pulp and paper mills whom EPA Regions or NPDES delegated States believe to be candidates for permit modifications based upon the presence or suspected presence of dioxins and furans in their effluent, and for whom the existing data from previous studies is determined by EPA to be insufficient to make permit determinations. The format for the collection is a letter citing Section 308 of the Clean Water Act, outlining the additional data required by the permitting authority, and asking for a sampling plan for the respondent.

In addition to the sampling plan, the information requested is effluent sampling, water column analysis, biomonitoring consisting of fish and/or shellfish tissue sampling of between 3 and 7 species, and/or sediment testing. Respondents must retain all sampling data for possible use by EPA, and are sometimes required to submit a quality assurance plan. Respondents are encouraged to employ EPA recommended sampling and analytical methods.

(b) *Discussion of How the Agency Uses the Data.* The information will be used by the permitting authority to assess the need to modify, revoke, issue or reissue permits, or assess compliance with permits or other NPDES requirements, including pretreatment or sludge. Specifically, EPA or the States will use information submitted by the mills to develop effluent limitations and monitoring requirements to be incorporated into the mills' permits (or the permits of the POTWs to which they discharge).

In order to develop effluent limitations that are protective of the environment, the permitting authority needs as much specific information on the facility and the nature of its discharge as possible. This is especially true in the case of dioxin because of its acute and chronic toxicity and persistence in the environment, and because of the low levels of the pollutant at which these effects are present. A single 5-day composite effluent sample, as was required in the 104 mill study, does not address receiving water concentrations or seasonal variations, which, along with other factors, are taken into consideration when effluent limits based on water quality standards are developed. Presence or absence of such data was taken into consideration when the EPA Regions identified the candidate mills covered in this ICR.

(c) *Reporting Frequency of Requested Data Items.* The information or data covered by this ICR is a one time requirement to be collected and reported to the permitting authority at the most quarterly over the period of one year. Should the data collected indicate the need to reopen the facility's permit, and modification of the permit results in new permit limits and/or monitoring requirements, the reporting of that data would be covered by the existing ICR for Discharge Monitoring Reports (OMB #2040–0004).

3. Use of Improved Information Technology to Minimize Burden

Improved information technology does not appear to provide opportunities to minimize respondent burden because there are no standard formats for the information, which respondents must submit as needed.

4. Non-Duplication

The information collected under this ICR is not intended to duplicate information collected elsewhere. The purpose of the information collection request is to provide new information which is not otherwise available.

EPA has examined all other reporting requirements contained in the Clean Water Act and 40 CFR parts 122, 123, 124, and 125. In addition, the following sources of information have been examined or consulted to determine whether duplicative information is available elsewhere:

- EPA Inventory of Automated Systems
- EPA Inventory of Information Collection Requests
- Federal Information Locator System

No duplicative reporting requirements were found from the examination of the sources listed above.

In the particular instance of 308 letters issued to pulp and paper facilities, OMB has raised concern over the duplication of information collected. The following discussion is an attempt to clarify the issue.

One of the primary purposes for issuing 308 letters is to collect information that is not otherwise available. Information, such as NPDES application forms, discharge monitoring reports (DMRs) or other special requests (e.g., Study on Dioxin Formation During Bleaching of Wood Pulp), may be similar in nature but does not provide all the information necessary to make permit/pretreatment decisions. The actual lack

of appropriate information is the basis for the 308 letter.

In the case of application forms and DMRs, data are lacking for at least one of the following reasons: Information on a specific pollutant or pollutants were not included; frequently and/or location of sample was inadequate; or type of sample was insufficient (i.e., fish tissue, ambient stream data, etc.).

In the case of the 104 mill dioxin study, a special ICR was developed to collect information from pulp and paper mills (i.e., the 104 mill study). The information collected focused primarily on submission of existing information on dioxin/furans in wastewater, sludges, pulp, process raw materials/additives and river/fish tissue samples, and sample/analysis of a 5 day composite from effluent, sludge and pulp from each bleach line with the plant. The primary purpose of the data was for the establishment of effluent guidelines and for permit modifications. However, some Regions found that the data collected from this study were not adequate to make decisions necessary for modification of a permit to include specific dioxin/furan limits. They found that existing data was available (i.e., no fish tissue or ambient stream data) or the effluent analysis was not sufficient to make adequate determinations. Based on that finding, some Regions and NPDES States sent out 308 letters requesting additional information. This latter collection of information, therefore, was not duplicative since the purpose was to collect missing information.

Consideration of Alternatives

EPA believes that the information requested under this ICR is not currrently available. The consequence of not collecting this information is that establishment of new or revised permit limits, standards, prohibitions or other requirements may not adequately reflect needed controls to protect water quality and achieve water quality standards. Not collecting the information could lead to permit limits or requirements that are either unnecessarily restrictive on the permittee or not stringent enough to protect human health and the environment.

6. Minimizing Burden for Small Businesses

All facilities that are point source discharges of pollutants to surface waters, regardless of size, are subject to the NPDES program. Since a small business' facilities are usually less complex, the burden associated with furnishing the information requested is usually less than that required of a large business with many complex facilities. However, a small business may be required to carry out toxicity monitoring requirements if their discharge contains or could contain toxic pollutants which impact achievement of water quality standards.

7. Consideration of Less Frequent Data Collection

This is a one-time collection activity, less frequent data collection would not provide the permit authority and EPA Headquarters with sufficient information to meet their responsibilities under the CWA.

8. Paperwork Reduction Act Guidelines

This information collection is in compliance with the Paperwork Reduction Act guidelines (5 CFR 1320.6). Note that section 308 requests for the purposes of emergency response or enforcement activities are exempt from the Paperwork Reduction Act requirements.

9. Consultations

EPA continually attempts to get outside input regarding NPDES related information collection activities. These attempts include public comment opportunities on regulations, permittee interviews, informal discussions between permittees and EPA and State permit writers, and opportunities for appeals and evidentiary hearings after permit issuance.

10. Confidentiality

Section 308 specifies that "Any record, reports, or information obtained under this section * * * shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such persons, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code."

EPA will treat all information for which a claim of confidentiality has been asserted in accordance with the procedures of 49 CFR Part 2, subpart B.

11. Sensitive Questions

No questions of a sensitive nature are associated with this information collection.

12. Cost to the Government and Respondents

A survey of the EPA Regions was conducted to determine from how many mills information would be collected. Information from 12 mills is to be collected by the Regions and 33 mills are to receive requests from NPDES States for a total of 45 respondents. Reporting frequency varies from a one-time smapling event to quarterly monitoring over the period of one year, therefore we have averaged the number of responses to two per year for all respondents.

Estimates of the cost to the Federal and State government and to respondents have been prepared using approximations of personnel costs for both the permit authorities and the dischargers.

The costs associated with salaries and overhead for State and private sector employees will probably vary significantly—more so than for EPA employees in Regional Offices. Since no guidance is available on calculating labor costs, the followig assumptions were used:

—The average annual salary for Federal and State employees is $29,783; this is equivalent to a GS–9, Step 10. At 2,080 hours per year, the hourly rate is $14.32.

—Overhead costs add an additional 9.5 percent to the cost of the average Federal and State salary. This equals $1.36 per hour, for a total hourly cost of $15.68.

—The average salary in the private sector is assumed to be 14 percent higher than the Federal/State average, giving an average annual salary of $33,953 and an hourly rate of $16.32. Overhead costs in the private sector are assumed to be 100 percent of $16.32 per hour, yielding a total hourly cost of $32.64.

(a) Cost to the Federal and State Government. Exhibit 1 indicates the estimated cost to Federal and State governments for handling and reviewing each of the requests covered by this ICR. All costs are based on receiving 2 responses over a 1 year period from each of the 45 mills (a sampling plan, however, is only submitted once regardless of collection frequency).

EXHIBIT 1—COSTS TO FEDERAL/STATE GOVERNMENT

Action	Hours per response	Federal			State		
		Responses*	Hours	Amount	Responses*	Hours	Amount
Review sampling plan	5	12	60	$941	33	165	$2,587
Data analysis and interpretation	15	24	360	5,645	66	990	15,523
Permit modification evaluations	8	24	192	3,011	66	528	8,279
Total	28		612	9,597		1,683	26,389

*Based on 2 responses per mill over 1 year (sampling plan, however is only submitted once regardless of sampling frequency).

The costs to Federal and State governments consist of reviewing the sampling plan submitted by the mill to ensure that it will properly characterize the nature and extent of dioxin discharges, and that it adheres to standard analytical methods. The largest cost involves analysis and interpretation of the data received, including checking the mill's documentation, and the preparation of summary reports. The costs associated with permit modification evaluations consists only of the decision on whether to reopen the mill's permit. Once a decision to reopen a permit is made, however, the government's costs associated with the actual modification process would be covered by ICR #2040–0068.

(b) Cost to Respondents. Exhibit 2 presents a summary of respondent annual burden costs both in terms of hours and dollars. A discussion of the respondent burden follows in section 13.

13. Estimate of Respondent Burden

Exhibit 2 presents a summary of respondent annual burden costs both in terms of hours and dollars.

Exhibit 2—*Costs to the respondents*

1. Respondents	45
2. Responses per year	2
3. Total responses (line 1 × line 2)	90
4. Hours per response	1,000
5. Total Burden Hours (line 3 × line 4 plus 40 hours per respondent (1800) for preparation of sampling plan)	91,800
6. Labor Hour $	32.64
7. Total Burden $ (line 5 × line 6)	2,996,352

EPA estimates the maximum burden for these requests at 1,000 hours per response; 200 hours to conduct effluent monitoring, 360 hours for field monitoring, 250 hours data analysis and evaluation, 100 hours for permittee review of contractor reports, and 50 to write the response. In addition, EPA estimates that a respondent will spend forty hours preparing a sampling plan, that is submitted only once, regardless of collection frequency. Exhibit 3 displays the components of respondent burden.

Exhibit 3—*Components of respondent burden*

Component	Hours
Effluent monitoring:	
Sampling	40
Lab analysis	160
Field monitoring:	
On-site biomonitoring	115
Sampling	105
Lab analysis/ID	160
Data analysis and evaluation report:	
Raw data analysis	175
Evaluation	85
Review contractor report	100
Prepare response	60
Total burden per response	1,000

These numbers were arrived at in consultation with the EPA Regions who have the most experience with these collections. The burden can vary a great deal depending upon what data already exists for the mill, and site conditions (how accessible are the monitoring locations, size and age of the mill, etc.) EPA believes that the burden presented here is a conservative estimate in that it respresents the maximum possible number of burden hours per response.

14. Reasons for Change in Burden

This is an added burden related to 45 facilities required to collect data for the purpose of permit modification.

15. Scheduling

No survey will be conducted for collecting dioxin data from pulp and paper mills.

16. Standard Industrail Classification (SIC)

Respondents affected by this collection are included in SIC codes 2611, 2621, 2631, and 2661.

B. Collection of Information Employing Statistical Methods

The information collection activity associated with this request does not employ statistical methods.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223), 401 M Street, SW., Washington, DC 20460,
and
Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

David DiFlore,

Acting Director, Information and Regulatory Systems Division.

[FR Doc. 90–3254 Filed 2–9–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140128; FRL–3707–5]

Access to Confidential Business Information by Resource Applications, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized the Resource Applications, Inc. (RAI), Burke, Virginia, and subcontractor Dynamac Corporation (DYN), Rockville, Maryland for access to information which has been submitted to EPA under sections 4, 5, 6, 7, and 12 of the Toxic Substances Control Act (TSCA). Some of the information involved may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than February 22, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D0–0006, contractor RAI, of 9291 Old Keene Mill Road, Burke, VA and 401 M St., SW., Washington, DC, and its subcontractor DYN, 11140 Rockville Pike, Rockville, MD, will provide service to support the implementation of section 12(b) of

TSCA. Section 12(b) of TSCA requires that any person who exports certain chemical substances for which certain actions have been taken under sections 4, 5, 6, or 7 of TSCA must notify EPA of the export. EPA must notify the foreign government of the export. The contractor will be required to log and track incoming notices from companies and mail export notices to foreign governments. Some of the information involved may be claimed or determined to be TSCA CBI.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D0–0006, RAI and its subcontractor DYN will require access to CBI submitted to EPA under sections 4, 5, 6, 7, and 12 of TSCA to perform successfully the duties specified under the contract. Some of the information may be determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 7, and 12 of TSCA that EPA may provide RAI and its subcontractor DYN access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters and RAI's facility located at 401 M St., SW., Washington, DC. RAI and its subcontractor DYN have been authorized access to TSCA CBI at RAI's facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved RAI's security plan and has found the facilities to be in compliance with the manual.

Clearance for access to TSCA CBI under this contract is scheduled to expire on December 31, 1992.

RAI and subcontractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: February 6, 1990.

Linda A. Travers,

Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90–3248 Filed 2–9–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

February 5, 1990.

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3785.

OMB Number: 3060–0105.

Title: Licensee Qualification Report.

Form Number: FCC Form 430.

Action: Extension.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 1,900 Responses; 3,800 Hours.

Needs and Uses: FCC Form 430 is submitted by certain new applicants, and by existing common carriers radio and satellite licensees and permittees annually if substantial changes occur in organization structure. Part 22 applicants are required to file FCC 430 when soliciting authority for assignment or transfer of control if a current one is not on file as required by item 18 on FCC Form 490. The information is used by FCC personnel to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees, as required by the Communications Act. If the information is not submitted, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–3217 Filed 2–9–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

Retirement of Nonvoting Common Stock

AGENCY: Federal Home Loan Mortgage Corporation ("Freddie Mac").

ACTION: Notice of retirement of nonvoting common stock.

SUMMARY: Pursuant to the terms of section 304(d) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1453(d), the Board of Directors of the Federal Home Loan Mortgage Corporation, by Resolution adopted at a meeting held on February 6, 1990, called for the retirement on February 7, 1990, of all outstanding non-voting common stock currently held by the twelve Federal Home Loan Banks at a par value of and purchase price value of $1,000.00 per share.

DATES: February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Freddie Mac, Investor Inquiry Department, 1759 Business Center Drive, P.O. Box 4112, Reston, Virginia 22090 (800) 336–3672, outside Washington, DC. (703) 759–8160, within Washington, DC metropolitan area.

Notice of Retirement

Nonvoting Common Stock

The Federal Home Loan Mortgage Corporation ("Freddie Mac") hereby gives notice to the holders of record (the "Holders") of nonvoting common stock, par value $1,000 per share, of Freddie Mac (the "Nonvoting Common Stock") that, pursuant to the terms of section 304(d) of the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1453(d) (the "Freddie Mac Act"), the Board of Directors of Freddie Mac has, by resolution adopted on February 6, 1990, called for the retirement of all of the issued and outstanding shares of Nonvoting Common Stock. The retirement price of the shares of Nonvoting Common Stock, as provided in section 304(d) of the Freddie Mac Act, is equal to the par value and the purchase price per share of the Nonvoting Common Stock (the "Retirement Price"), which is $1,000. The Retirement Price payable to each Holder is set forth on Schedule A hereto.

The shares of Nonvoting Common Stock shall be retired and paid for in full commencing as of February 7, 1990. Funds sufficient to effect the retirement shall be deposited with the Treasurer of the United States (the "Treasurer", as paying agent, on the opening of business of such date. As the shares of Nonvoting Common Stock are not evidenced by certificates and are evidenced solely by entries on the Stock Register of Freddie Mac, each Holder shall be paid the Retirement Price set forth on Schedule A hereto upon delivery by the Holder to the Treasurer of instructions for payment of the Retirement Price as provided below. From and after February 7, 1990, the shares of

Nonvoting Common Stock issued to the Holders shall cease to evidence an equity interest in Freddie Mac and shall evidence solely the right to receive payment of the Retirement Price set forth on Schedule A hereto.

Freddie Mac represents and certifies to Holders that, after retirement of the Nonvoting Common Stock and payment of the Retirement Price, the reserves and surplus of Freddie Mac will exceed $100,000,000.

This notice has been delivered by hand to each Holder at the address of record of each Holder set forth on the Stock Register of Freddie Mac.

Instructions for payment of the Retirement Price (i) shall be in writing, (ii) shall set forth the Holder's account to which payment of the Retirement Price shall be made, and (iii) shall be deemed given when delivery by hand (including, without limitation, by any private or public courier service) to Hon. Catalina Vasquez Villalpando, Treasurer of the United States, at 1500 Pennsylvania Avenue, NW., Washington, DC 20220, with a copy to Freddie Mac, at Lake Fairfax Business Center, 1759 Business Center Drive, Reston, Virginia 22090, Attention: Senior Vice President, General Counsel and Corporate Secretary.

SCHEDULE A

Name of holders	Retirement price
Federal Home Loan Bank of Atlanta	$14,200,000
Federal Home Loan Bank of Boston	4,900,000
Federal Home Loan Bank of Chicago	10,300,000
Federal Home Loan Bank of Cincinnati	9,300,000
Federal Home Loan Bank of Dallas	6,800,000
Federal Home Loan Bank of Des Moines	6,100,000
Federal Home Loan Bank of Indianapolis	4,900,000
Federal Home Loan Bank of New York	11,700,000
Federal Home Loan Bank of Pittsburgh	6,100,000
Federal Home Loan Bank of Topeka	3,900,000
Federal Home Loan Bank of San Francisco	17,900,000
Federal Home Loan Bank of Seattle	3,900,000
	$100,000,000

Leland Brendsel,

President.

[FR Doc. 90-3223 Filed 2-9-90; 8:45 am]

BILLING CODE 6719-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-011081-001.

Title: South Carolina State Ports Authority/Orient Overseas Container Line, Inc. Terminal Agreement.

Parties: South Carolina State Ports Authority, Orient Overseas Container Line, Inc.

Synopsis: The Agreement extends the term of the basic agreement until the earlier of the filing of a superseding agreement or April 30, 1990.

Agreement No.: 224-200323.

Title: San Francisco/Nedlloyd Terminal Revenue Sharing Agreement.

Parties: San Francisco Port Commission (Port), Nedlloyd Lines (Nedlloyd).

Synopsis: The Agreement provides for Nedlloyd to utilize the Port of San Francisco as its regularly scheduled Northern California port of call for its vessel operations. Nedlloyd will pay the Port sixty percent (60%) of all revenue from dockage and wharfage generated from use of Port facilities in lieu of one hundred percent (100%) of the rates published in the Port's Tariff. The term of this Agreement is ninety (90) days.

Agreement No.: 224-003930-003.

Title: Port Authority of New York and New Jersey/Universal Maritime Service Corporation Terminal Agreement.

Parties: Port Authority of New York and New Jersey (Port), Universal Maritime Service Corporation (Universal).

Synopsis: The Agreement amends the basic agreement. It provides for an exception to the usage rental for the handling of zinc at the Port's Red Hook Marine Terminal, Brooklyn, New York. The unit rate applicable to zinc handled in breakbulk shall be an amount equal to the wharfage charge for "all cargo unless otherwise specifically provided for" as set forth in the Port's tariff, FMC Schedule PA-9. This rate shall not otherwise be subject to increase in accordance with the provisions of the lease agreement.

By order of the Federal Maritime Commission.

Dated: February 6, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-3163 Filed 2-9-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives a notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011198-002.

Title: Puerto Rico/Caribbean Discussion Agreement.

Parties: Hapag-Lloyd AG, Thos. & Jas. Harrison Ltd., Nedlloyd Lines, B.V., Campagnie Generale Maritime, Sea-Land Service, Inc., Crowley Caribbean Transport, Inc., Trailer Marine Transport Corp.

Synopsis: The proposed amendment would extend the geographic scope of the Agreement to include Belize and Barbados. It would also make other nonsubstantive changes.

Agreement No.: 207-011257-001.

Title: Wallenius-NOSAC Far East Joint Service Agreement.

Parties: Walleniusrederierna AB, Norwegian Specialized Autocarriers—NOSAC.

Synopsis: The proposed modification would limit the geographic scope of the Agreement to cover shipments only to ports in Taiwan and Japan.

Agreement No.: 203-011271.

Title: U.S./Peru Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., Empresa Naviera Santa.

Synopsis: The proposed Agreement would authorize the parties to meet, discuss and agree on rates and charges. Any such agreement is voluntary.

By order of the Federal Maritime Commission.

Dated: February 6, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-3164 Filed 2-9-90; 8:45 am]

BILLING CODE 6730-01-M

[C.O. 1, Amdt. No. 13]

Organization and Functions of the Federal Maritime Commission

The following delegation of authority is made to the Director, Bureau of Domestic Regulation, by amending Commission Order 1, section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Domestic Regulation by adding subsection 9.12 to read as follows:

9.12 Authority contained in 46 CFR 581.8 to notify filing parties of the Commission's intent to reject a service contract and/or statement of essential terms and subsequently return and reject such contracts filed by common carriers in the foreign commerce of the United States.

Dated: February 7, 1990.

James J. Carey,

Acting Chairman.

[FR Doc. 90-3221 Filed 2-9-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Citicorp, New York, New York; Proposal To Conduct Private Placements of All Types of Securities as Agent and Engage in Riskless Principal and Other Securities-Related Activities

Citicorp, New York, New York ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through Citicorp Securities Markets, Inc., New York, New York ("CSMI") in the following activites: (1) The placement, as agent for issuers, of all types of nonregistered obligations and securities; and (2) the purchase and sale of all types of securities on the order of investors as a "riskless principal". Applicant has also applied for prior approval to engage through CSMI and Newbridge Securities, Inc. (together, "Companies") in (1) providing securities brokerage and investment advice on a combined basis to institutional customers: and (2) providing financial and transaction advice, including (i) advice in connection with mergers and acquisitions, divestitures, financing transactions, valuations and fairness opinions in connection with merger, acquisition and similar transactions, and tender offer evaluations for unaffiliated financial and nonfinancial institutions; (ii) advice regarding the structuring of and arranging for loan syndications and similar transactions; (iii) advice regarding the structuring of and arranging swaps, caps, and similar transactions relating to factors such as interest rates, currency exchange rates, prices and economic and finanical indices; and (iv) foreign exchange advisory transactional services, as permitted by § 225.25(b)(17) of Regulation Y (12 CFR 225.25(b)(17)). Company would conduct the proposed activities on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has approved the private placement of all types of obligations and securities under certain limitations. *See J.P. Morgan & Company Incorporated,* 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation,* 75 Federal Reserve Bulletin 829 (1989). Applicant has agreed to comply with substantially all of the limitations placed on those activities.

The Board has also approved the purchase and sale of all types of securities on the order of investors as "riskless principal" under certain limitations. *See J.P. Morgan & Company Incorporated; Bankers Trust New York Corporation.* Applicant has agreed to comply with substantially all of the limitations placed on those activities.

Applicant has applied to engage in the combined offering of investment advice with securities brokerage services to institutional customers as set forth in the Board's Orders approving those activites for a number of bank holding companies. Specifically, Applicant has committed that Companies will engage in the proposed activities using the methods and procedures and subject to the same prudential limitations as set forth in *Bankers Trust New York Corporation,* 74 Federal Reserve Bulletin 695 (1988).

Applicant has applied to engage in providing financial and transaction advice pursuant to the Board's Orders in *Signet Banking Corporation,* 73 Federal Reserve Bulletin 59 (1987); *Canadian Imperial Bank of Commerce,* 74 Federal Reserve Bulletin 571 (1988); and *The Nippon Credit Bank, Ltd.,* 75 Federal Reserve Bulletin 308 (1989).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than March 14, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 6, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-3195 Filed 2-9-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement 017]

Public Health Conference Support Grant Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1990 for the Public Health Conference Support Grant Program related to Human

Immunodeficiency Virus (HIV) prevention.

Authority

This program is authorized under sections 301 and 317 of the Public Health Service Act, as amended. Program regulations are set forth in 42 CFR part 52, entitled "Grants for Research Projects."

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, college, research institutions, hospitals, public and private organizations, State and local health departments and small, minority and/or woman-owned businesses are eligible for these grants.

Availability of Funds

Approximately $225,000 will be available in Fiscal Year 1990 to fund approximately ten awards. The awards will range from $1,000 to $30,000 with the average award being approximately $15,000. The awards will be funded with a 12-month budget and project period. The funding estimate outlined above may vary and is subject to change.

The following are examples of the most frequently encountered costs which may or may not be charged to the grant:

1. Grant funds may be used for direct cost expenditures: salaries, speaker fees, rental of equipment, registration fees, transportation costs (not to exceed economy class fares), and travel of non-Federal employees.

2. Funds may not be used for the purchase of equipment, payments of honoraria, indirect costs, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee or for per diem or expenses other than local mileage for local participants.

Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

Purpose

The purpose of the HIV-related conference support grants is to provide partial support for specific non-Federal conferences in order to intensify efforts to prevent the transmission of HIV infection.

Program Requirements

The programmatic areas of interest in which applications are being solicited by CDC for HIV-related conferences are: (1) Disease prevention; (2) information/education (specifically regarding the cause and transmission of the virus); and (3) biostatistics.

Some examples of areas that conferences might address are: (1) HIV/AIDS education and risk reduction messages including the need to prevent and treat drug use and STDs among high-risk populations; (2) sources of referrals for medical, psychosocial support and behavioral services; (3) information on how to prevent, reduce or eliminate high-risk behaviors and how to change community norms by discouraging high-risk behaviors and by supporting low/no-risk behaviors; and (4) eliminating, reducing, or preventing high-risk behaviors.

Evaluation Criteria

The review of applications will be conducted by a CDC-convened review committee. Applications for support of the types of conferences listed in the Program Requirements section above will be evaluated and ranked for funding. The major factors to be considered in the evaluation of responsive applications will include:

1. *Proposed Program* (50%)

a. The public health significance of the proposed conference as it relates to HIV prevention, including the degree to which the conference can be expected to influence public health practices;

b. The feasibility of the conference based on the operational plan;

c. The quality of the conference objectives in terms of specificity; and

d. The extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attendees.

2. *Applicant Capability* (30%)

a. The adequacy and commitment of institutional resources to administer the program;

b. The adequacy of the facilities to be used for the conference; and

c. The degree to which the applicant has established and referenced critical linkages with health and education agencies with the mandate for HIV prevention. (Letters of support from such agencies could demonstrate these linkages.)

3. *Program Personnel (20 percent)*

a. The qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership;

b. The competence of associate staff persons, discussion leaders, and speakers to accomplish the proposed conference; and

c. The degree to which the application demonstrates the personnel's knowledge of the transmission of HIV, as well as information and education efforts currently underway which may affect, and be affected by, the proposed conference.

4. *Program Budget* (Not scored)—Evaluated for the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of grant funds.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 13.118.

Other Considerations

Recipients must comply with the document entitled: "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Education Sessions (October 1988)" (54 FR 10049, March 9, 1989). In complying with the Program Review Panel requirements contained in the document, recipients are encouraged to use an existing Program Review Panel such as the one created by the State Health Department's AIDS/HIV Prevention Program.

Application Submission and Deadline

The original and two copies of the Application Form PHS 5161–1 shall be submitted in accordance with the schedule below. The schedule also sets forth the anticipated award date:

Application deadline: June 1
Anticipated award date: September 1

Applications must be submitted on or before the deadline date to: Mr. Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtained a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*—Applications which do not meet the criteria in 1.a. or 1.b. will be considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Ms. Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842–6630.

Please refer to Announcement 017 when requesting information and when submitting your application in response to the announcement.

Dated: February 2, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90–3233 Filed 2–9–90; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–00–4410–08]

Environmental Statements: Tonopah Resource Area, NV

February 6, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare the Tonopah Resource Management Plan and Environmental Impact Statement (RMP/EIS) for the Tonopah Resource Area and a notice of a scoping period for the public to participate in the identification of planning issues, review of preliminary planning criteria, and formulation of alternatives for the RMP. This notice is also an invitation to the public to nominate or recommend areas for "Areas of Critical Environmental Concern" (ACEC) consideration.

SUMMARY: The Bureau of Land Management's (BLM) Battle Mountain District gives notice of its intent to prepare a Resource Management Plan (RMP) for the Tonopah Resource Area. This Resource Area covers approximately 6.1 million acres of public lands located in Nye and Esmeralda Counties, Nevada. The primary purpose of this planning effort is to provide adequate long-term management for expanding resource demands on the public lands in this area. The RMP will generally establish: Land areas for limited, restricted or exclusive use; allowable resource uses and related levels of production; resource condition goals and objectives; program constraints and management practices; the need for more detailed activity plans; support measures needed; general implementation sequences; and intervals and standards for monitoring and evaluating the land use plan.

DATES: Public comments on the identification of planning issues, preliminary planning criteria, and the formulation of alternatives will be accepted until March 30, 1990. Three informal workshops will be held to assist the public in making their wishes known early in the planning process. Meetings are scheduled for: Thursday, March 1, 1990 at the Tonopah Convention Center, 301 Brougher, Tonopah, Nevada; Tuesday, March 6, 1990 at the Carson City BLM District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada; and Thursday, March 8, 1990 at the Las Vegas BLM District Office, 4765 West Vegas Drive, Las Vegas, Nevada. All three meetings will begin at 7 p.m. each evening.

FOR FURTHER INFORMATION CONTACT: Theodore Angle, Area Manager, Tonopah Resource Area, Bureau of Land Management, Bldg. 102, Military Circle, P.O. Box 911, Tonopah, NV 89049, telephone (702) 482–6214.

SUPPLEMENTARY INFORMATION: The Tonopah Resource Area is currently operating under the Tonopah Management Framework Plan (MFO) and the Esmeralda/Southern Nye RMP. The five-year monitoring review of the Tonopah MFP identified that expanding resource demands, coupled with changes in management policies (Supplemental Program Guidance, BLM Manual 1620 Series), have rendered the MFP inadequate for long-term management guidance of many resoures. The monitoring review, along with the mandate to amend the Tonopah MFP and the Esmeralda/Southern Nye RMP for fluid minerals indicates a need to prepare a RMP/EIS for the Tonopah Resource Area.

The anticipated issued for this RMP are:

(1) Determine which land within the Resource Area should be identified for and designated as utility corridors to minimize conflicts with other resource values.

(2) Determine which lands are available for land tenure adjustment to accommodate land disposal actions while identifying "for retention" lands with important public values.

(3) Determine which lands are available for harvesting of woodland products, live desert plants, and other vegetative products in accordance with the principles of sustained yield.

(4) Determine which lands should be given special management consideration to protect high resource values.

(5) Determine which lands are open, closed or limited to off-road vehicle use to provide for the use of the public lands which protecting important resource values.

(6) Determine what intensity of management should be implemented in wild horse and burro Herd Management Areas to ensure a natural thriving ecological balance consistent with other resource values.

(7) Determine which lands should be closed to mineral leasing, mineral location, or mineral material sales and what terms, conditions, or other special considerations should apply on open lands to prevent unnecessary or undue degradation of the public land.

(8) Determine what management objectives should be established for wilderness study areas (WSAs) released by Congress for non-wilderness multiple use purposes.

Preliminary planning criteria for the RMP are as follows:

1. All decisions from previous land use plans which represent valid existing management will be brought forward in the Tonopah RMP/EIS.

2. The RMP/EIS will not address the allocation of forage beyond what currently exists in the present planning documents. The current monitoring, evaluation, and adjustment program continues to provide adequate managerial guidance.

3. Management of WSAs will continue under the "Interim Management Policy for Lands Under Wilderness Review" (IMP). Should all or part of any WSA be released by Congress from wilderness study, resource management will come under the scope of the Tonopah RMP.

4. Use and observe the principles of multiple use and sustained yield.

5. Use an interdisciplinary approach to integrate consideration of physical, biological, economic, and other sciences.

6. Give priority to the designation of ACECs.

7. Relay on the existing inventory and studies of the public lands, their resources and other values.

8. Consider present and potential uses of the public lands.

9. Weigh long-term benefits to the public against short-term benefits

10. Provide for compliance with applicable pollution laws.

11. To the extent possible, coordinate land use inventory, planning, and management programs of other Federal agencies and State and local governments.

12. Section 302(b), FLPMA requires the Secretary of Interior to manage the public lands so as to prevent unnecessary or undue degradation of the lands.

13. BLM 1620 Manual, Supplemental Program Guidance, will be used to identify resource condition objectives, land use allocations, and management direction determinations that will be made in this RMP.

14. Comply with all public land laws, policies, and direction.

15. Reasonable economic development scenarios will be prepared based on existing levels of mineral development and at least one alternative of a higher level of mineral development. A scenario of lower mineral development, than that which currently exists, will not be developed.

16. Consider the management prescriptions on adjoining lands to minimize inconsistent management, especially in regard to corridor identification.

17. Lands covered in the RMP/EIS will be the public lands within the Tonopah Resource Area boundaries. Lands in adjoining district will not be considered in the RMP/EIS.

18. No specific determinations will be made on coal resources due to known poor quality, marginal occurrence and lack of expressed interest.

The public is invited to participate in the formulation of alternatives to be analyzed in the RMP/EIS. At a minimum, a no action alternative and a resource management alternative will be considered.

The public is also invited to submit nominations or recommendations for areas to be considered for designation as an ACEC. Four areas with existing designations will be considered as potential ACECs. These are: Pinyon-Joshua Transition Area—Research Natural Area; Lunar Crater and Timber Mountain Caldera—National Natural Landmarks; and Railroad Valley—Wildlife Management Area. Sixteen other areas have been nominated but have not been screened during preplanning for the criteria of "relevance" or "importance."

The RMP/EIS will be prepared by an interdisciplinary team representing the following disciplines: Wildlife, minerals, lands, cultural resources, wild horses and burros, wilderness, soil, air, water, fire management and socio-economics.

Public participation is an integral part of the planning process. It begins with this scoping period and public workshops and will continue throughout the development of this plan. The next major opportunity for public review and comment will be offered with the release of the proposed alternatives to be analyzed in the RMP/EIS.

The public is encouraged to comment or become involved at any time during the planning process.

Planning documents and other pertinent materials pertaining to this planning effort, including maps of the area, may be examined at the Tonopah Resource Area office at the above address between 7:30 a.m. and 4:30 p.m., Monday through Friday.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 90-3234 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-84

[CO-010-00-4320-02]

Craig, CO, Advisory Council Meeting

Time and Date: March 28, 1990, at 10 a.m.

Place: BLM—Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters To Be Considered:

1. Colorado Weed Bill.
2. Wildlife Resolution.
3. Riparian Taskforce.
4. Coordinated Resource Managment.
5. Wilderness Environmental Impact Statement.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625-1229, Phone: (303) 824-8261.

Dated: February 2, 1990.

William J. Pulford,

District Manager.

[FR Doc. 90-3236 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-JB-M

[Alaska AA-48579-AT]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

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-48579-AT has been received covering the following lands:

Copper River Meridian, Alaska

T. 8 S., R. 1 W.,
Sec. 9, S½NW¼.
(80 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 May 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48579-AT 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 May 1, 1989, subject to the terms and conditions cited above.

Dated: January 31, 1990.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-3242 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-JA-M

[Alaska AA-48572-BR]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

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-48572-BR has been received covering the following lands:

Copper River Meridian, Alaska

T. 10 N., R. 4 W.,
Sec. 10, SE¼SW¼.
(40 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 April 1, 1989, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48572-BR 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 April 1, 1989, subject to the terms and conditions cited above.

Dated: January 31, 1990.

Ruth Stockie,

Chief, Branch of Mineral Adjudication.

[FR Doc. 90-3243 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-JA-M

[OR-020-4410-10: GPO-112]

Extension of Public Comment Period for Draft Resource Management Plan and Environmental Impact Statement; Three Rivers Planning Area, Burns District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period extension.

SUMMARY: Notice is hereby given of the extension of the 90-day public comment period for the Draft Three Rivers Resource Management Plan/Draft Environmental Impact Statement (RMP/EIS). The extension will be from February 1, 1990 through February 16, 1990.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Planning Team Leader, Bureau of Land Management, Burns District (Telephone 503-573-5241).

Dated: January 31, 1990.

Joshua L. Warburton,

District Manager.

[FR Doc. 90-3176 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-33-M

[OR-942-00-4730-12: GPO-111]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian, Oregon

T. 39 S., R. 1 W., accepted 1/5/90
T. 38 S., R. 2 W., accepted 12/1/89
T. 37 S., R. 4 W., accepted 12/1/89
T. 28 S., R. 9 W., accepted 12/1/89
T. 29 S., R. 11 W., accepted 1/5/90
T. 32 S., R. 15 W., accepted 12/8/89
T. 40 S., R. 4 E., accepted 1/5/90
T. 2 N., R. 33 E., accepted 12/8/89
T. 9 S., R. 41 E., accepted 12/8/89

If protests against a survey, as shown on any of the above plats, are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plats will be placed in the open files of the Oregon State Office, Bureau of Land Management, 825 NE Multnomah, Portland, Oregon 97208, and will be available to the public as a matter of information only. Copies of the plats may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 31, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-3177 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Meeting; Outer Continental Shelf Advisory Board

AGENCY: Department of the Interior, Minerals Management Service, Pacific OCS Region.

ACTION: National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; notice and agenda for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463.

The Pacific Regional Technical Working Group (RTWG) Committee of the National OCS Advisory Board is scheduled to meet March 8, 1990 from 8:30 a.m. to 5 p.m., at the Travelodge Hotel at Fisherman's Wharf, 250 Beach Street, San Francisco, California 94133.

The tentative Agenda for the meeting covers the following topics—

Reports

The Pacific Northwest OCS Task Force.
Key issues State of California: Local Marine Fisheries Impact Program; British Columbia/States (AK, WA, OR, CA) Oil Spill Task Force.
Key issues State of Washington.
Key issues State of Oregon.
OCS Policy Committee Meeting: Seattle, Washington, October 1989.

Pacific OCS Issues and Updates

National energy issues.
The President's OCS Leasing and Development Task Force.
Offshore air quality issues.
Office of Leasing and Environment: Hard Bottom Committee; Environmental studies.
Post lease projects

Public Comment Period

Minutes of the meeting will be available for public inspection and copying at the following location: Pacific OCS Region, Minerals Management Service, 1340 West Sixth Street, room 277, Los Angeles, CA 90017.

Dated: February 6, 1990.

Alan Shaw,

Acting Regional Director, Pacific OCS Region.

[FR Doc. 90-3232 Filed 2-9-90; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Daniel Boone National Forest

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

ACTION: Notice of request for determination and invitation for interested persons to participate.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination that R.W. Coal Company has valid existing rights (VER) for a coal haulroad on Federal lands within the Daniel Boone National Forest in Clay County, Kentucky. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual material on the matter. OSM intends to develop a complete Administrative Record and will render a final agency decision on whether R.W. Coal Company has VER.

DATES: OSM will accept written materials on this request for a VER determination until 5:00 p.m. local time on March 14, 1990.

ADDRESSES: Hand deliver or mail written materials to Carl C. Close, Assistant Director, Eastern Field Operations at the address listed below. Document contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Eastern Field Operations, Room 246, Ten Parkway

Center, Pittsburgh, PA 15220, Telephone: (412) 937–2897.

Office of Surface Mining Reclamation and Enforcement Knoxville Field Office, 530 Gay Street, Suite 500, Knoxville, TN 37902, Telephone: (615) 673–4330.

SUPPLEMENTARY INFORMATION: Section 522(e) of SMCRA prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Under section 522(e)(2), the prohibition is applied to any Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic or other values that may be incompatible with such surface coal mining operations and the surface operation and impacts are incident to an underground coal mine. The proposed haulroad in question will service a surface mine.

The term "VER" is not defined in SMCRA. On September 14, 1983 (48 FR 41312), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative Procedures Act and remanded the definition to the Secretary of the Interior (In Re: Permanent Surface Mining Regulation Litigation II No. 79–1144).

In the November 20, 1986, Federal Register (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands within the boundaries of national forests using the VER definition contained in the appropriate state regulatory program.

The term "VER" is defined in the Kentucky Administrative Regulations at 405 KAR 24:040. Section 4 of these rules states that VER for haulroads means a recorded right-of-way, recorded easement, or a permit for a coal haulroad recorded as of August 3, 1977; or any other road in existence as of August 3, 1977.

By letter dated January 25, 1990, R.W. Coal Company requested that OSM make a determination of VER for a coal haulroad affecting tracts 204 and 204A within the Daniel Boone National Forest in Clay County, Kentucky. The unnamed road in question is approximately 1,000 feet in length and is located 2.7 miles northeast of Ashers Fork at latitude 37°02'45" and longitude 83°36'11". It is located approximately 0.75 miles east of the junction of Jim Cove Hollow Road and Sand Hill Road. The requestor intends to make certain improvements in the existing road in order to haul coal from a planned surface coal mining operation on adjacent private lands.

To establish that the requestor has VER for the proposed haulroad, OSM must determine that the requestor has demonstrated all necessary property rights. OSM invites interested persons to provide factual information as to whether the requestor has the right to imporve and use the road in question as a coal haulroad for a surface mine, and other factual information concerning whether the requestor has VER under the applicable standards.

OSM will make a final decision on R.W. Coal Company's VER request as soon as it is practicable following completion of the Administrative Record. If OSM determines that R.W. Coal Company has VER, it may issue a Federal surface coal mining and reclamation permit to R.W. Coal Company authorizing the improvement and use of the road for coal mining purposes. If is is determined that R.W. Coal Company does not have VER, no permit will be issued.

Dated: January 31, 1990.

Jeffrey Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 90–3216 Filed 2–9–90; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB–7 and AB–57; Sub-Nos. 115X and 30X]

CMC Real Estate Corp.; Abandonment Exemption and Soo Line Railroad Co.; Discontinuance Exemption; Rockford, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CMC Real Estate Corporation and the discontinuance by the Soo Railroad Company of operations over 2.27 miles of rail line in Rockford, IL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 14, 1990. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 22, 1990, petitions to stay must be filed by February 27, 1990, and petitions for reconsideration must be filed by March 9, 1990.

ADDRESSES: Send pleadings referring to Docket Nos. AB–7 (Sub-No. 115X) and AB–57 (Sub-No. 309X), to:

(1) Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

(2) Petitioners' representative:
John H. Broadley, Susan R. Podolsky, Jenner & Block, 21 Dupont Circle, NW., Washington, DC 20036.
Larry D. Starns, Law Department, 1000 Soo Line Building, 105 S. Fifth Street, Minneapolis, MN 55402.

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

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

Decided: February 2, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–3214 Filed 2–9–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31595]

Transkentucky Transportation Railroad, Inc.; Trackage Rights Exemption, CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), has agreed to grant overhead trackage rights and the rights to provide limited and restricted local service to East Kentucky Power Cooperative at Charleston Bottoms to Transkentucky Transportation Railroad, Incorporated, between Charleston Bottoms, KY and Springdale, KY, a distance of 13.1 miles.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

The trackage rights were to become effective on January 26, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Michael J. Canter, Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, OH 43216-1008.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: February 6, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-3215 Filed 2-9-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging a Final Judgment by Consent; Allied Signal, Corp., et al.

Notice is hereby given that on February 2, 1990, a proposed Consent Decree in *United States of America* v. *Allied Signal, Corporation, et al.* Civil Action No. 89-225 E ("*Allied Signal*"), was lodged with the United States District Court for the Western District of Pennsylvania.

The *Allied Signal* complaint filed by the United States in October 1989, together with the complaint in *United States* v. *Warren Car Company et al.*, Civil Action No. 89-89 E ("*Warren Car*") filed in April 1989, seeks the recovery of response costs incurred and to be incurred by the United States in responding to the release of hazardous substances alleged to have emanated from the Warren Car Company facility at the Starbrick Area Site in Starbrick, Pennslyvania pursuant to section 17(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a). Named as defendants in the *Allied Signal* complaint are the present operators, a former operator and seven generators who are alleged to have contracted with the former operators for the cleaning or servicing of railroad tank cars which results in the disposal of hazardous substances from the tank cars at the facility. The *Warren Car* complaint named as defendants the owner and a former operator of the facility and a generator.

In the proposed Partial Consent Decree, the present operator defendants Warren Car and Tank, Inc. and Warren Industries, Inc. agree to pay the United States $65,000 in settlement of the past response cost claim against the current operators. The current operator defendants are not released from liability for any future costs incurred by the United States. The proposed consent decree does not address the liability of any of the other defendants.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC., 20530, and should refer to *United States* v. *Allied Signal Corporation* Civil Action No. 89-225 E, DOJ Ref. No. 90-11-3-239A. The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the Consent Decree may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, room 1517, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC., 20044. When requesting a copy, please present or enclose a check in the amount of $1.00 (ten cents per page reproduction costs) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-3200 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Middlesboro, KY, et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 16, 1990 a proposed amended consent decree in *United States, et al.* v. *City of Middlesboro, Kentucky, et al.* Civil Action No. 84-11, DOJ 90-5-1-1-2066A, was lodged with the United States District Court for the Eastern District of Kentucky.

The amended consent decree is entered into between the United States, the City of Middlesboro, Kentucky, the Middlesboro Tanning Company of Delaware and the Commonwealth of Kentucky. Intervening plaintiffs, the Yellow Creek Concerned Citizens, are not signatories to the amended consent decree. The amended consent decree requires the City of Middlesboro to pay $93,750 in compromise of claims by the United States for alleged violations of a consent decree entered in a Clean Water Act (33 U.S.C. 1251 et seq.) case and to fund an instream monitor of the impacted receiving stream, Yellow Creek, at a cost of $40,000. The Middlesboro Tanning Company is required to pay $31,250 in satisfaction of demands for penalties for alleged violations of the original consent decree. The entry of the amended consent decree also resolves a motion to modify or terminate the existing consent decree filed by the Tanning Company.

Under the terms of the amended consent decree, additional discharge parameters and more stringent discharge limitations are imposed on the Tanning Company in its new pretreatment permit issued by the City, although chromium limits are made constant the year around and a slight increase in Biological Oxygen Demand is allowed if the Tanning Company pays an additional sum for its treatment. The amended consent decree terminates in three years as to each party defendant, provided that such defendant has been in continuous compliance for the previous year.

The Department of Justice will receive comments relating to the proposed amended consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States, et al.* v. *City of Middlesboro, Kentucky, et al.*, D.O.J. Ref. 90-5-1-1-2066A.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Kentucky, Limestone and Barr Streets, Lexington, Kentucky, and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the

proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. Any request for a copy of the decree should be accompanied by a check in the amount of $2.20 for copying costs payable to the "United States Treasurer" and should refer to the DOJ Ref. No. above listed.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-3201 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Great Lakes Development Co., et al.

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation and Liability Act and with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on November 11, 1989, a proposed Consent Decree in *United States* v. *Great Lakes Development Company, et al.*, Civil Action No. 89-0704 LKK-JFM was lodged with the United States District Court for the Eastern District of California. The proposed Consent Decree concerns the reimbursement by defendants Great Lakes Development Co. and George Reed, Inc. to the United States for response costs incurred by the United States in the clean-up of hazardous substances at the Copper Cove Subdivision Superfund Site in Calaveras County, California (the "Site"). Under the Consent Decree, Great Lakes will pay the United States $190,291.68, and Reed will pay the United States $113,335.67 within thirty (30) days of the entry of the Consent Decree. The Consent Decree provides that the parties are not relieved from liability for any response costs incurred by the United States after the entry of the Decree in connection with any future responses to the release or threatened release of hazardous substances into the environment from the Site. Litigation remains pending against one defendant, H.K. Porter Company, for the recovery of costs not covered under the proposed Consent Decree.

The Consent Decree shall be effective upon the date of entry by the Court. The Consent Decree shall terminate upon certification by the United States that all payments have been made and received in accordance with the terms of the Consent Decree.

The Department of Justice will receive comments for a period of thirty (30) days from the date of this publication relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Great Lakes Development Co., et al.*, DOJ Ref. 90-11-2-404.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Sacramento, California and at the Region IX Office of the Environmental Protection Agency in San Francisco, California. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1647, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natrural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount $1.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Barry Hartman,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-3240 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; United States v. Toledo Coke Corp. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 5, 1990 a proposed Consent Decree in *United States* v. *Toledo Coke Corporation, et al.*, Civil Action No. 87-7218, was lodged with the United States District Court for the Northern District of Ohio, Western Division. The proposed Consent Decree concerns discharge of pollutants from Toledo Coke's cokemaking facility to a wastewater treatment works owned and operated by the City of Toledo, Ohio. The proposed Consent Decree requires that Toledo Coke meet the categorical pretreatment standards that apply to it under section 307 of the Federal Water Pollution Control Act ("the Act"), 33 U.S.C. 1317. To meet these limits, Toledo Coke will build and operate a wastewater treatment system at its cokemaking plant. Under the proposed Decree, Toledo Coke will be subject to stipulated penalties for failing to complete that treatment system in timely fashion and for failing to comply with pretreatment limits. For past violations of the Act, the proposed Decree provides that Toledo Coke will pay the United States a civil penalty of $100,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Toledo Coke Corporation, et al.*, DOJ Ref. No. 90-5-1-1-2732.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, 307 U.S. Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio 43624, at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.30 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-3241 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; Computer Aided Manufacturing-International, Inc.

Notice is hereby given that, on January 9, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Computer Aided Manufacturing-International, Inc. ("CAM-I") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and research and development project areas of CAM-I. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The current industrial member companies in the United States are: Alcoa; Allied-Signal Aerospace Co.; Arthur Andersen & Co.; AT&T; The Boeing Company; Brown & Sharpe; Carnation Company; Caterpillar, Inc.;

Dana Corporation; Deere & Company; Deloitte Haskins & Sells; Eastman Kodak Company; Eaton Corporation; Electronic Data Systems; Ernst & Young; Ford Motor Co.; General Dynamics-Ft. Worth; General Electric; Grumman Aerospace; Harris Corporation; Hewlett Packard; Honeywell, Inc.; Hughes Aircraft Co.; LTV Aerospace & Defense; Lockheed Missiles & Space; Management Science America; Martin Marietta Energy Sys.; McDonnell Douglas Corp.; Northern Telecom, Ltd.; Northrop Corp.; Parker Hannifin; Peat Marwick Main & Co.; Price Waterhouse; Proctor & Gamble Co.; Rockwell International; Sandia National Labs; TC2; Texas Instruments; Textron, Inc.; The Timken Co.; U.S. Air Force; U.S. Navy; UTC-Pratt & Whitney; Westinghouse; and Xerox.

The current industrial member companies in Europe are: Aerospatiale; Alcatel NV; British Aerospace; British Telecom, Ltd.; Bull; Coopers & Lybrand; Eurosept Associes; Finmeccanica; IVF; Lucas Engineering; Messerschmitt-Bolkow-Blohm; Nuovo Pignone S.P.A.; Philips International; The Plessey Company; Siemens Co.; TNO Metaalinstituut; Valmet Corporation; and Volkswagen AG.

Current industrial member companies in the Pacific region are: Fujitsu, Ltd.; Hitachi, Ltd.; Honda Engineering Co.; and Oki Electric.

Current educational members in the United States are: Arizona State University; California Polytechnic State University; Illinois Institute of Technology; Massachusetts Institute of Technology; North Carolina State University; North Texas State University; Oklahoma State University; Purdue University; Rensselaer Polytechnic Institute; University of California; University of California (UCLA); University of Maryland; University of Massachusetts; University of Minnesota; University of Missouri-Rolla; University of New Hampshire; University of Southern California; and University of Waterloo-Ontario.

Current educational members in Europe are: Cranfield Institute of Technology; Dorset Institute of Higher Education; Helsinki University of Technology; Katholieke Universiteit Leuven (CRIF); Loughborough University of Technology; Politechnico Di Milano; Royal Institute of Aachen; Universiteit Frederciana Karlsruhe; and University of Trondheim-Norway.

The current educational member in the Pacific region is Kyoto University.

The planned activities of CAM-I remain unchanged except that the project area relating to geometric modeling has been changed to product modeling and two new project areas have been added: Computer integrated enterprise and product optimization.

On December 15, 1984, the Joint Venture filed its original notification pursuant of section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 24, 1985, 50 FR 3425-26. Additional notifications showing changes in membership were published in the **Federal Register** on February 26, 1986, 51 FR 6812-13; May 4, 1987; 52 FR 16321-22; February 12, 1988, 53 FR 4232-33; and February 6, 1989, 54 FR 5693-94.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-3198 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Testing of Improved Tamper-Evident Closures for Baby Food; National Food Laboratory

Notice is hereby given that, on January 12, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), The National Food Laboratory filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identity of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damanges under specified circumstances. Pursuant to section 6(b) of the Act, the identity of the parties to this agreement and the general areas of planned activity are given below:

The current parties are the following: Beech-Nut Nutrition Corporation, Gerber Products Company, H. J. Heinz Company, The National Food Laboratory, Inc., Anchor Hocking Corporation.

The area of planned activity is the coordination of testing efforts to facilitate the prompt development of an improved tamper-evident closure for baby foods. Under the joint venture the parties are testing a composite tamper-evident closure developed by Anchor Hocking Corporation ("AHC"). The processors have reach tentative agreement as to the standardized features and specifications that must be met by an improved tamper-evident closure. These features may be modified by the processors during the course of the project. If the processors conclude that the composite tamper-evident closure developed by AHC meets all prescribed criteria and standards, AHC will use its best efforts to produce sufficient quantities of the closure to meet total industry demand by August 1, 1991.

Any baby food processing company that is not a party to the agreement will be entitled to receive information concerning the research project on the condition that it (a) assure that there will not be premature public disclosure of the progress of the research and testing results, (b) prevent undue publicity concerning tampering and tamper-evident closures, (c) minimize the potential for confusion, misinformation and uncertainty concerning the development and use of an improved tamper-evident closure and (d) protect the intellectual property rights of the parties.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-3199 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Zirconium Alloy Tubing Corrosion Research and Development Program; Sandvik Special Metal Corp.

Notice is hereby given that, on January 8, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Sandvik Special Metals Corporation filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of an existing joint venture, the Zirconium Alloy Tubing Corrosion Research and Development Program ("the Venture"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sandvik advised that by written agreement dated October 18, 1989, the Babcock & Wilcox Company assigned its interest in the Venture to B&W Fuel Company, a partnership in which the partners are B&W Fuel, Inc. and Virginia Fuels, Inc. As of October 18, 1989, the Babcock & Wilcox Company is not a member of the Venture and B&W Fuel Company is a member of the Venture.

No other changes have been made in either the membership or planned activity of the Venture.

On March 29, 1987, the Venture filed its original notification pursuant to section 6(a) of the Act. The Department

of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 24, 1987, 52 FR 13769.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-3197 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Microelectronics Center of North Carolina

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics Center of North Carolina (MCNC) on December 19, 1989, filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of MCNC. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On June 6, 1988, MCNC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 1988, 53 FR 28922.

As of December 12, 1989, the following has been added as an affiliate of MCNC: Mitsubishi Semiconductor America, Inc.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-3238 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; PDES Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES Inc. ("PDES") on January 5, 1990, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282). On February 16, 1989, and June 27, 1989, PDES filed additional written notifications. The Department published notices in response to the additional notifications on March 21, 1989 (54 FR 11580) and July 18, 1989 (54 FR 30116), respectively.

TRW Inc., and United Technologies Corporation, have been admitted as members of PDES, Inc., effective November 28, 1989.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-3239 Filed 2-9-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-90-19-C]

Pyrra Mining Co.; Modification of Application of Mandatory Safety Standard

Pyrra Mining Company, P.O. Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Margaret No. 11-B Mine (I.D. No. 36-08139) located in Armstrong County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt entry to ventilate active working places.

3. In support of this request, petitioner proposes to install a fire detection (CO monitoring) system in all belt entries used as intake aircourses to monitor air at each belt drive and tailpiece in intake aircourses. The monitoring devices would be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed, except when power is removed during a fan stoppage or the belt haulageway is examined.

4. The system would be capable of providing both visual and audible alarm signals to a working section and to a manned surface location where a responsible person having two-way communications with all working sections would always be on duty when miners are underground. A visual alert signal would be activiated when the CO level at any sensor is 10 parts per million (ppm) above ambient air and an audible signal would be activated when the CO level is 15 ppm above ambient air. When the CO system gives a visual signal, all persons would be withdrawn from the affected area. When the CO system gives an audible signal, the mine-specific fire fighting and evacuation plan would be implemented.

5. The CO system would be capable of monitoring electrical continuity and detecting electrical malfunctions.

6. The CO system would be examined visually at least once each coal-producing shift and tested for functional operation at least once every 7 days. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least every 30 calendar days.

7. If the CO system is deenergized for routine maintenance or due to failure of a sensor unit, the belt conveyor would continue to operate, provided the affected portion of the belt conveyor entry is continuously patrolled and monitored for carbon monoxide by a qualified person using a hand-held carbon monoxide detection device.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 14, 1990. Copies of the petition are available for inspection at that address.

Dated: February 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-3193 Filed 2-9-90; 8:45 am]

BILLING CODE 4510-43-M

Mine Safety and Health Administration

[Docket No. M-90-1-M]

Sunshine Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Sunshine Mining Company, P.O. Box 1080, Kellogg, Idaho 83837 has filed a petition to modify the application of 30 CFR 57.19011 (drum flanges) to its Sunshine Mine (I.D. No. 10-00089) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that flanges on drums extend radially a minimum of 4 inches or three rope diameters beyond the last wrap, whichever is the lesser.

2. Petitioner state that the modification is requested only for the Jewell double drum hoist, which is currently provided with helical grooving on the drum faces which results in excessive wear at the crossovers and induces unwanted torque in the wire rope.

3. Petitioner proposes to use new drum face liners, which would improve both performance and safety by providing gentler transitions when the rope changes layers, which would reduce rope wear at crossover points.

4. Petitioner further states that this new grooving on a properly installed hoist will prevent a pile up of wraps which could allow the rope to drop over the flange.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 14, 1990. Copies of the petition are available for inspection at that address.

Dated: February 5, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-3194 Filed 2-9-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Request for Nomination of Members

The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for individuals to be appointed to the Advisory Committee on Construction Safety and Health. The Committee is established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) The function of the Committee is to advise the Assistant Secretary on occupational safety and health matters in the construction industry. The committee meets approximately three to six times per year for one to three days per meeting. Nominations or re-nominations of current members will be accepted in all categories of membership which include: five representatives of employee interests; five representatives of employer interests; two representatives of State interests; two public representatives; and a Federal agency representative. The terms of the present members of the Committee will expire June 30, 1990. The term of office is two years and would end on June 30, 1992.

Nominees must have specific experience and be actively engaged in work related to occupational safety or health in the construction industry. No member of the Committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule. The category of membership for which the candidate is qualified should be specified in the nomination letter which should come from an organization representative of that particular category.

A resume of the nominee's background, experience and qualifications with date of birth, current address, telephone number and Social Security number should be included with the letter. In addition, the nomination letter shall state that the nominee is aware of the nomination, is willing to serve as a Committee member, is able to be present at meetings, and has no apparent conflicts of interest that would preclude unbiased service on the Committee.

Nominations should be submitted to Tom Hall, OSHA Division of Consumer Affairs, room N-3647, U.S. Department of Labor, Washington, DC 20210, no later than March 15, 1990. For further information contact Tom Hall at (202) 523-8615.

Signed at Washington, DC this 6th day of February, 1990.

Gerald F. Scannell,

Assistant Secretary.

[FR Doc. 90-3235 Filed 2-9-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by March 7, 1990, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before February 26, 1990.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503 (202-395-7316); and Mr. Larry Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 204, Washington, DC 20506 (202-682-5403).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Room 204, Washington, DC 20506 (202-682-5403), from whom copies of the applicable information are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h). Grantees of the National Endowment for the Arts that receive Endowment funds for the purpose of subgranting are required to forward lists of proposed subgrants and related information to the Endowment for review and approval. The lists will be accompanied by a description of the actual selection process (limited to one paragraph), the review criteria against which subgrant recommendations were evaluated, and names and primary professional affiliation of those (e.g., panelists) involved in making the subgrant recommendations. The lists may also be accompanied by a copy of the complete application from those proposed for a subgrant, as necessary.

Title: Additional Terms and Conditions for Organizations Receiving Support for Subgranting.

Frequency of Collection: On occasion.

Respondents: Endowment grantees that conduct subgranting.

Use: Grant administration and oversight.

Estimated Number of Respondents: 40.

Average Burden Hours per Response: 4.
Total Estimated Burden: 160.

Cynthia Rand,
Deputy Chairman for Management.

[FR Doc. 90-3212 Filed 2-9-90; 8:45 am]
BILLING CODE 7537-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142
Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549.
Extension
Form 11-K, File No. 270-101
Regulation B, File No. 270-102
Rule 236, File No. 270-118
Form 8, File No. 270-158
Rules 701, 702, 703 and Form 701, File No. 270-306

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commissioner") has submitted for OMB approval extension of the following: Forms 8, 11-K, and 701, Regulation B, and Rules 236, 701, 702, and 703. Filings on these forms and pursuant to the rule and regulations: (1) Provide limited exemptions from the registration requirements of the Securities Act of 1933; and (2) ensure that issuers of publicly traded securities provide the marketplace with current information necessary for informed investment decisions. The Commission estimates that approximately five respondents file schedules and forms under Regulation B annually at an estimated 41 burden hours per response. Form 11-K is filed by approximately 774 respondents annually at an estimated 30 burden hours per response. Form 8 is filed by 6,856 respondents annually at an estimated 12 burden hours per response. Form 701 is filed by approximately 500 respondents annually at an estimated 1 burden hour per response. Finally, approximately 10 respondents make filings pursuant to Rule 236 annually at an estimated 1.5 burden hours per response. The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0082, 0093, 0095, 0141, and 0347), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-3182 Filed 2-9-90; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27676; File No. SR-CBOE-89-26]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Position Limits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1989, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Additions are italicized.)

Rule 24.4 Position Limits

(a) through (c) No change.
. . . Interpretations and Policies:
.01 No change.
.02 For the purpose of facilitating (in accordance with the provisions of Rule 6.74 (b)) their own customer's (one that will enter, clear and have the resulting position carried with the firm) hedge exemption orders (as defined in Rule 24.4, Interpretation .01), the proprietary account of a broker dealer may receive and maintain an exemption from this position limit rule to the extent that the following procedures and criteria are met:

(a) The firm receives approval from the Department of Market Surveillance prior to executing facilitating trades. The approval for the facilitating exemption will specify the maximum number of contracts which may be exempt under this Interpretation. The actual amount of an exemption shall be no greater than the number of contracts executed for the firm in facilitating the customer which exceed the applicable position limit. A firm so approved is hereinafter referred to as a "facilitation exemption firm".

(b) The facilitation exemption firm provides all information required by the Exchange on approved forms and keeps such information current.

(c) The facilitation exemption firm must receive permission for a facilitating trade from a designated official of the Exchange's Department of Market Surveillance prior to entering their customer's hedge exemption order and their own facilitating order. In addition, the firm shall abide by or comply with the following provisions regarding the execution of the orders:

(1) Neither order may be contingent on "all or none" or "fill or kill" instructions;

(2) The orders may not be executed until the Order Book Official has announced the orders to the entire crowd via an audio system and crowd members have been given a reasonable time to participate pursuant to Rule 6.74.

(d) The facilitation exemption firm shall be required to carry the resulting exempted option position in a segregated account with an Exchange member.

(e) To remain qualified, a facilitation exemption firm must provide to the Department of Market Surveillance's designated official, within two business days of the execution of a facilitating exemption order, information relating to how the resulting options position is hedged.

(f) Subject to the maximum number of exempt option contracts allowed under subpart (a) hereof, the maximum total exemption may in no event exceed 75,000 same-side of the market option contracts in a class of broad-based index options dealt in on the Exchange.

(g) The facilitation exemption firm shall promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them. A copy of both order tickets must be provided to the Department of Market Surveillance on the day of execution.

(h) The facilitation exemption firm and any member carrying an account for a facilitation exemption firm shall:

(1) Comply with all Exchange rules and regulations;

(2) Liquidate and establish options positions in an orderly fashion; not

initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate the hedge to the exempted index option position with a view toward taking advantage of any differential in their prices;

(3) Promptly notify the Exchange of any material change in the exempted options position or the hedge;

(4) Cause all option orders subject to this exemption to be designated "firm, facilitating customer hedge" on the floor;

(5) Not exercise an amount of option contracts over a five consecutive business day period that would exceed the accounts assigned near term position limit amount as determined by the Department of Market Surveillance; Expiration Friday and Saturday are considered as one business day.

(6) Not increase the exempted option position once it is decreased, (the exempted amount allowed under subpart (a) hereof shall be traded on a liquidation only basis, i.e., closing orders only,) unless approval is received again pursuant to a reapplication under this Interpretation;

(7) Upon request, provide a copy of the customer order ticket to any Market-Maker participating on the other side of such order.

(i) Any member that maintains a broad based index option position dealt in on the Exchange in their own account or in an account for a facilitation exemption firm, and has reason to believe that a position in such account is in excess of the applicable limit, shall promptly take the action necessary to bring the position into compliance. Failure to abide with this provision shall be deemed to be a violation of Rules 4.11 and 24.4 by the member.

(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the facilitating exemption and may form the basis for subsequent denial of an application for a facilitating exemption hereunder.

.03 Interpretation and Policy .05 to Rule 4.11 shall apply for index options. In addition, where a customer hedge order pursuant to Interpretation .01 of Rule 24.4 and a firm facilitating order pursuant to Interpretation .02 of Rule 24.4 are to be crossed after announcement to the trading crowd, a Market-Maker may exceed the applicable position limits without prior approval, as detailed in Interpretation .05 of Rule 4.11 as it pertains to instant exemptions; provided that the Market-Maker abides by the other provisions for instant exemptions and follows the conditions set forth below:

(a) The Market-Maker will only trade with a customer hedge exemption order announced by the Order Book Official;

(b) The Market-Maker contacts two Exemption Committee members responsible for granting instant exemptions within ten (10) minutes of the accommodation of a customer hedge order; and

(c) The Market-Maker provides a copy of the customer order to the Exemption Committee members.

Rule 24.5 Exercise Limits

No change.

. . . Interpretations and Policies:

.01 No Change

.02 Facilitation exemption firms shall be subject to an exercise limit as described in Rule 24.4 Interpretation .02(h)(5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule filing is intended to provide customer accounts that qualify for a hedge exemption pursuant to Interpretation and Policy .01 of Rule 24.4 another avenue to ensure the timely execution of their hedge exemption orders. As such, a firm's proprietary account will now be able to facilitate (pursuant to Rule 6.74(b)) their own customers' hedge exemption orders. The requirements for the firm will be substantially similar to those of a customer. However, no application will be required to be submitted prior to the granting of the exemption and the firm is not given specific hedge requirements. The firm will be required to call the Market Surveillance Department detailing the need for the exemption and the expected resulting positions. If the firm then acts as a facilitator, it will be required to provide copies of the necessary supporting data.

Another difference from the customer provisions is that the firm will be in a liquidation mode once the exemption is established. They will not have a perpetual exemption as customers do, and will be required to follow the process for each future facilitating action they plan to take. While this may force the liquidation of positions at expiration, whereas customers can roll positions, the Exchange believes no additional burdens will be placed on the markets at that time.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and reguations thereunder, and, in particular, section 6(b)(5) of the Act because the proposed rule is designed to remove impediments to and perfect the mechanism of a free and open market, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be availble for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3183 Filed 2-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27675; File No. SR-NYSE-89-32]

Self-Regulatory Organizations; the New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice and Order Granting Accelerated Approval to Amendment No. 1 Relating to Revisions in the Specialist Performance Evaluation Questionnaire

I. Introduction

On October 19, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to revise its Specialist Performance Evaluation Questionnaire ("SPEQ"), which is administered pusuant to Exchange Rule 103A, in order to enhance the process whereby NYSE floor brokers evaluate quarterly the performance of specialist units with which they do business. Amendment No. 1, submitted on December 28, 1989, proposes a modification to the revised SPEQ.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 27428 (November 7, 1989), 54 FR 47629 (November 15, 1989). No comments were received on the proposal.

II. Background

NYSE Rule 103A contains standards for evaluating specialist performance and authorizes the Exchange's Market Performance Committee ("MPC") to reallocate one or more securities assigned to a specialist unit whose performance is found consistently to be substandard as determined by the Rule. Under Rule 103A, a specialist's performance is measured by a combination of SPEQ scores and objective standards of performance (i.e., timeliness of regular openings; promptness in seeking floor official approval of non-regulatory delayed openings; timeliness of Opening Automated Report Service execution reports; timeliness of Super Designated Order Turnaround system turnaround performance; responses to administrative messages; and market share). Below-standard performance on any one measure will result in a performance improvement action by the MPC. Such an action could result in a reallocation of a specialist's securities.

The SPEQ, which was revised last in 1986, is a quarterly survey on specialist performance completed by floor brokers. The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.[4] Rule 103A establishes acceptable performance levels for ratings received on the SPEQ.[5] A specialist unit currently is subject to a performance improvement action in any case where (1) its overall median score on the SPEQ is below "adequate" in any one quarter (a total numerical score of 117 of 225 possible points is deemed adequate); (2) its SPEQ score in the same function is below "adequate" for two consecutive quarters (24 of a total of 45 possible points in each function is deemed adequate); or (3) its SPEQ score in any two of five functions is below "adequate" for two consecutive quarters.

III. Description of the Proposal

The NYSE's proposal substantively would modify the existing SPEQ. The new SPEQ, which was developed by the MPC's Subcommittee on Performance Measures and Procedures, in conjunction with consultants from Opinion Research Corporation ("ORC"), will employ a new rating scale and a "relative scoring methodology" that would provide each specialist unit with an overall rank and a range of ranks. In addition, the proposal would make participation in the SPEQ process mandatory for all floor brokers. The Exchange expects to implement the new SPEQ beginning the first quarter of 1990.[6]

A. Questions

The NYSE's current SPEQ is comprised of 28 weighted questions covering a wide spectrum of specialist functions and activities. The questions are grouped under five functional categories: Dealer Function, Agency Function, Maintaining the Auction Market Function, Communications Function and Administrative Function. Each of these five functional categories is of equal weight.

The exchange's revised SPEQ will differ from the existing SPEQ in a number of areas. First, the new SPEQ will contain 21 questions, as compared with 28 questions on the old SPEQ. Like the current SPEQ, these questions will be grouped under five functional categories with each section containing evaluation questions. The categories, however, will change. The Dealer, Communications, and Administrative Function categories will remain the same, while the Agency and Maintaining the Auction Market Function categories will be eliminated. A new category, entitled the Service Function, will be added. It will include certain questions previously contained in the Agency and the Maintenance of the Auction Market Sections of the current SPEQ, as well as new questions that emphasize the specialist's service function. The other new category, called the Competitiveness Function, will contain questions emphasizing the specialist's dealer and agency roles and the need for specialist units to act in a

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] Amendment No. 1 proposes that a question under the Competitiveness Function on the new questionnaire be deleted and a new question be substituted. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, SEC, Division of Market Regulation, dated December 27, 1989.

[4] All eligible floor brokers (e.g., those floor brokers with a minimum of one year of experience) participate in the SPEQ survey process. Floor brokers are instructed to rate and discuss the specialist units with whom they have the most contact.

[5] On May 9, 1988, the Commission approved, on a two-year pilot basis, the adoption of minimum standards for acceptable performance by specialists. *See* Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988). Prior to this time, results of the SPEQ were not used as the basis for reallocations. Rather, they served as the impetus for informal counseling of specialist units and for making allocation decisions for new listings.

[6] The Exchange intends to administer the current questionnaire to rate specialist performance for the fourth quarter of 1989. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Mary Revell, Branch Chief, SEC, Division of Market Regulation, dated December 27, 1989.

manner which ensures that pricing and service on the NYSE are competitive with other market centers.

The percentage weight accorded each category also will differ on the new SPEQ. On the current SPEQ, all five categories are accorded equal weight. On the revised SPEQ, the Dealer, Service, and Competitiveness Function categories will be each accorded a percentage weight of 30%, while the Communications and Administrative Function sections will have a percentage weight of 5%.

B. Revised Rating Scale

Currently, each question on the SPEQ is graded on a five-point scale where a grade of one is equal to "poor," two is "needs improvement," three is "adequate," four is "good," and five is "very good." An overall median score is then derived for each specialist unit, as well as a median score reflecting the unit's performance for each function. Although specialist units also are provided with "scaled scores" and "calculated ranks" which reflect a specialist unit's performance relative to other units, only a specialist unit's objective median scores are considered for purposes of Rule 103A.

The questions on the new SPEQ will be graded on a percentage scale ranging from 0% to 100%, which reflects the percentage of time a specialist unit engages in a described behavior. For example, a score of 30% would indicate that a specialist unit engaged in a described behavior 30% of the time. A grade of 100% will be defined as "always" and a grade of 0% will be defined as "never." Some of the questions will be worded negatively, in which case a grade of 0% would be the best possible score, while other questions will be worded positively, in which case a grade of 100% would be the best possible score.

C. Relative Scoring Methodology

The new SPEQ process will employ a relative scoring methodology that would provide each specialist unit with an overall rank and a range of ranks. The range would identify the specialist units whose grades are essentially the same, compared to those that are statistically significantly different. For example, a unit that ranked 25th overall would receive a rank of 25, and might receive a range of ranks from 20 to 30, indicating that its score was not statistically significantly different from a specialist unit that was ranked as high as 20, or as low as 30. Specialist units would not receive an absolute score as they do under the current process.

D. Performance Improvement Action Criteria

Exchange Rule 103A was enacted to ensure that a high level of market quality and performance in Exchange-listed securities is achieved and maintained. Under Rule 103A(b), a specialist unit whose performance falls below the minimum standards specified in the Supplementary Material to the Rule is subject to a performance improvement action, and, potentially, reallocation proceedings. Currently, these standards use absolute SPEQ scores. The Exchange proposes to change the standards to trigger an improvement action if a specialist's performance was particularly poor relative to other units. For instance, a unit might be subject to a performance improvement action if it was ranked among the bottom units in terms of a percentage to be determined by the Exchange and if the unit's range of ranks indicated that the unit was statistically significantly lower than the top ranked units.[7]

The NYSE proposes to administer the new SPEQ for two quarters without using it for performance reviews. It proposes to set actual standards for Rule 103A actions based on SPEQ scores received after two quarters of experience with the new questionnaire. During this interim period, Rule 103A would not contain standards relating to the SPEQ regarding the initiation of a performance improvement action. Instead, during this period, the Exchange intends to impose a freeze on the ability of a specialist unit that has been identified as a true bottom performer based on its relative range of ranks to apply for a new stock allocation.[8]

E. Mandatory Participation by Floor Brokers

The Exchange proposes to make broker participation in the new SPEQ process mandatory and to impose fines on brokers who fail to file quarterly SPEQs.[9] The NYSE indicates that ORC will administer the SPEQ and implement a methodology for filtering out "biased" questionnaires. Examples of questionnaires that the NYSE would consider biased are questionnaires in which a broker gives every specialist unit a perfect high or low score; questionnaires in which a broker gives the identical rating to each question for a given specialist unit; or questionnaires where the brokers give the same pattern of ratings for all units rated. Under this process for screening SPEQs, a broker whose questionnaire is found to be biased would not be deemed to have met the participation requirement and would thus be subject to a fine.[10] Finally, the Exchange plans to conduct a member education program before the new SPEQ is implemented to inform and educate all members of the changes in the SPEQ process.

IV. Discussion

The Commission strongly supports efforts by the NYSE and other exchanges to encourage quality specialist performance through its specialist performance evaluation process. The Commission believes that the proposed revisions to the SPEQ used by the NYSE to evaluate the performance of specialist units will improve the Exchange's ability to evaluate specialist performance and address continued weak performance by any given specialist unit.

The incorporation of relative performance standards into the NYSE's specialist evaluation procedures should enhance substantially the quality of the evaluation process. The Commission has long favored the incorporation of relative performance standards into the specialist evaluation process so that specialists who were regularly among the lowest ranked specialist units would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance. In this regard, the Commission consistently has urged the NYSE to adopt relative performance measures into its specialist evaluation process.[11] The need for the

[7] To illustrate how this criteria will be utilized, the Exchange cites the following example. If the specified percentage was 10% and 50 units were being evaluated, a unit ranked 48th overall would be considered a bottom performer because it ranked in the bottom 10% of units. Where the unit ranked 48th and also received a range of ranks from 46 to 50, it might be subject to a Rule 103A action, whereas a unit ranked 48th with a range of ranks form 40 to 50 would not be.

[8] The Exchange has committed during this interim period to identify the worst performing specialist units based on the SPEQ and refer them to the MPC for counseling. Moreover, under Rule 103A, the MPC could determine whether these units, based on the other Rule 103A criteria, warranted a performance improvement action.

[9] The NYSE, in a separate rule filing, has proposed an amendment to Exchange Rule 476A, which provides for disciplinary action against members, to allow the Exchange to levy fines pursuant to summary disciplinary procedures against brokers who fail to file SPEQs on a quarterly basis. *See* File No. SR–NYSE–89–44.

[10] The Exchange expects the fine to be levied pursuant to Rule 467A. *See id.*

[11] *See, e.g.*, letters from Douglas Scarff, Director, Division of Market Regulation, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981 and August 18, 1982; letter from Richard G. Ketchum, Director, Division of Market Regulation to John J. Phelan, Jr., dated July 30, 1986; and Securities

Continued

NYSE to adopt such relative performance standards was highlighted by specialist performance on the Exchange during the October 1987 market break. In the Division of Market Regulation's ("Division") report on the October 1987 Market Break, the Division examined specialist performance on the NYSE on October 19 and 20, 1987.[12] Although some NYSE specialists appeared to perform well under the adverse conditions, the Division found that specialist performance during the October 1987 Market Break varied widely. The Division concluded that the wide disparity in specialist performance underscored the need for the NYSE to develop relative standards of performance for evaluating specialists.[13] Moreover, as discussed previously,[14] on May 9, 1988, the Commission approved modifications, on a two-year pilot basis, to NYSE Rule 103A, which, among other things, set minimally acceptable performance standards for specialists and incorporated objective performance measures into the Rule 103A process. In that Order, the Commission expressed its concerns about the lack of relative performance standards in the NYSE SPEQ.[15]

The Commission believes that the adoption of relative performance standards in the NYSE's new SPEQ is an important step in increasing the effectiveness of the NYSE's evaluation program. By providing the Exchange with a mechanism to identify and correct specialist performance that is inferior to that of the bulk of specialist units, the new relative performance standards will assist the Exchange in addressing performance weaknesses by specialist units and should be useful in motivating specialists to improve their performance. Thus, the NYSE's adoption of relative performance standards should further the maintenance of fair and orderly markets.

With respect to changes in the categories under which specialists are evaluated and modifications in the number and wording of the evaluation questions, the Commission believes that the content of the revised SPEQ is a fair and accurate measurement of specialist performance. The questions cover the main functions of specialist—dealer, broker, and auctioneer—and cover the responsibilities of a specialist in these areas. The new grading method for the questions and the screening of biased questions should reduce the "grade inflation" that has plagued the SPEQ in recent quarters.[16] This should make the SPEQ a more valuable instrument for performance reviews and allocation decisions.

The revised SPEQ will include a new category called competitiveness. While, as a general matter, this category is not a necessary component of a specialist performance review from a regulatory perspective, it furthers a legitimate business objective of the Exchange. Moreover, the specific questions under this section relate, for the most part, to the primary functions of a specialist. Finally, the Commission believes that the new weighing scale of the revised SPEQ, giving more weight to the Dealer, Service, and Competitiveness Function sections than to the Communications and Administrative Function sections, is appropriate in that the Exchange is attaching more significance to the specialist unit's primary responsibilities.

The Commission believes that making the quarterly filing of the SPEQ a mandatory requirement for all floor brokers will assist in maintaining the consistency and reliability of the SPEQ process. In that regard, the Exchange's intention to conduct a member education program to provide information to members regarding the new SPEQ and how it will be implemented will further assist in the effectiveness of the SPEQ process, particularly in the first few quarters of its implementation.

V. Conclusion

The Commission has reviewed carefully the proposed rule change and has concluded that the NYSE's revised SPEQ provides for adequate and proper evaluation procedures for purposes of identifying and correcting poor specialist performance and for rewarding superior specialist performance. The Commission believes that the NYSE's revisions to its SPEQ can serve as a meaningful and effective vehicle to encourage specialist units to maintain high levels of performance and market quality. This in turn can benefit the execution of public orders and promote competition among exchanges.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[17] in that it is designed to promote just and equitable principles of trade and strengthen the Exchange's specialist system, as well as further the public interest in fair and orderly auction markets on national securities exchanges. The Commission believes that the proposed rule change significantly enhances the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act and Rule 11b–1 thereunder which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The revised SPEQ should enhance substantially the Exchange's ability to evaluate specialist performance, resulting in higher performance levels and market quality.

In addition, the Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. The amendment merely deleted one question and substituted a new question. Accelerated approval of Amendment No. 1 is necessary in order for the Exchange to be able to prepare and administer the revised SPEQ in the current quarter.

Interested persons are invited to submit written data, views and arguments concerning the amendment to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that

Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (November 29, 1989), approving adoption of the American Stock Exchange's equities specialist performance and allocation and reallocation procedures to its specialist unit evaluation questionnaire.

[12] *See* Division of Market Regulation, *The October 1987 Market Break*, February 1988, at xvii, 4–1.

[13] *Id* at xvii, 4–28 to 4–29.

[14] *See supra* note 4.

[15] The Commission specifically urged the NYSE to give prompt attention to developing relative performance standards, that would, for example, subject those units in the bottom 10% for two consecutive quarters to a performance improvement action. *See* Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287 (May 16, 1988).

[16] for example, for the quarter ending June 1989, 84% of the 51 specialist units received the highest overall possible score on the SPEQ.

[17] 15 U.S.C. 78f(b)(5) (1982).

may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-32 and should be submitted by March 5, 1990.

It is therefore ordered, pursuant to section 19(b) of the Act, [18] that the proposed rule change [SR-NYSE-89-32] is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Dated: February 5, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3184 Filed 2-9-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27692; File No. SR-NASD-88-23]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the PORTAL Market

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 10 and 25, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") amendments to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the amendments was to make a number of changes to the language of proposed Schedule I to the NASD By-Laws (the "PORTAL[SM] [1] Rules") in response to SEC comments and a comment letter received on the proposed rule change, to make a number of minor clarifying amendments to the rule language, and to make a conforming rule change to Article IX to the NASD Code of Procedure. The significant amendments are described below. The NASD previously filed Amendments Nos. 1, 2 and 3 to SR-88-23 which were published for comment in Securities Act Release No. 27470 (November 24, 1989), 54 FR 49164 (November 29, 1989). A copy of Amendments No. 4 and 5 and/or the revised language of the PORTAL Market Rules are available by request to the Office of General Counsel of the NASD, 1735 K Street NW., Washington, DC 20006.

Below is the text of the proposed conforming rule change to Article IX of the Code of Procedure. Proposed new language is italicized; proposed deletions are in brackets.

Code of Procedure

* * * * *

Article IX

Procedures on Grievances Concerning the NASDAQ System

and the PORTAL[SM] Market

Purpose

Sec. 1. The purpose of this Article is to provide, where justified, redress for persons aggrieved by operations of the NASDAQ System *and the PORTAL[SM] Market* and to provide procedures for the handling of qualification matters pursuant to the NASDAQ rules *and the PORTAL[SM] Market rules.*

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing a number of amendments to the language of the proposed rule change for the purpose of responding to SEC staff comments and one comment letter received on the proposed rule change. Throughout the PORTAL Rules the NASD has also made a number of amendments that are intended to clarify the rule language and do not require further explanation herein.

Part I—Definitions

The NASD is proposing to add three new definitions to part I. New section 3 would provide a definition of the term "execution" to mean "entering into a purchase, sale or transfer of a PORTAL security" in order to distinguish between the time when a transaction or transfer is entered into and when the transaction or transfer actually occurs as a result of settlement. Several provisions of the PORTAL Rules are amended to reflect the appropriate use of the word "execution" or "executed".

New section 12 is proposed to provide a definition of the term "PORTAL Exit Report" to mean "a report manually or electronically filed with NASD Market Surveillance within one (1) business day of the sale or transfer of a PORTAL security by a PORTAL participant to Part III, section 3(b)(5) and Part IV, section 1(b)(11) of the PORTAL Rules."

Finally, the NASD is proposing to add as new section 15 a definition of the term "PORTAL Rules" to mean "the PORTAL Market rules as includes in Schedule I to the NASD By-Laws." As a result of this change, all references to "the Schedule" or "this Schedule" in the PORTAL Rules have been amended to refer to the "PORTAL Rules". All other provisions in part I have been renumbered to reflect the three new definitions.

The NASD is proposing to amend section 18 (previously, section 15) which includes the definition of a "qualified exit transaction." The first amendment is for the purpose of replacing the exemption for transactions pursuant to Rules 901 or 906 of Regulation S in subsection 18(b)(1) as Regulation S has not been adopted as yet. The revised rule language would, instead, provide an exemption for transactions not subject to registration under the Securities Act of 1933 ("Securities Act") by reason of compliance with:

(1) *Securities Act Release No. 4708 (July 9, 1964), 29 FR 9828 or with* [*Rules 901 or 906 of*] *Regulation S when adopted* [thereunder], as it may be amended from time to time; [2]

It is anticipated that transactions made pursuant to Securities Act Release No. 4708 would be in compliance with the SEC's published no-action letters that are applicable to the particular situation.

The NASD is also proposing to amend Section 18 to respond to the comment received and to reflect the discussion in the **Federal Register** notice which stated that, "Finally, exit trasactions are

---

[18] 15 U.S.C. 78s(b)(2) (1982).

[19] 17 CFR 200.30-3(a)(12) (1989).

[1] PORTAL is a service market of NASD Market Services, Inc.

[2] New language is italicized; deleted language is in brackets.

permitted where the seller has demonstrated to the NASD on a pre-exit basis * * * that the transaction is exempt from SEC registration under Rule 144A based on an opinion of counsel." [3] The NASD is proposing to add new subjection 18(b)(4) as follows:

(4) Rule 144A adopted thereunder, as determined by the Association, upon the submission of an opinion of counsel prior to the transmission.[4]

Pursuant to this provision, the NASD will review an opinion of counsel prior to an exit transaction in PORTAL securities from the PORTAL Market to determine if the opinion demonstrates that the proposed exit transaction will be in compliance with the conditions of Rule 144A. The NASD believes that prior review of exit transactions pursuant to Rule 144A will prevent resale of PORTAL securities into the U.S. retail market in contravention of Rule 144A.

The NASD is also proposing to delete the definition of the term "U.S. person" currently in section 24 of part I as no longer necessary.

The NASD is also proposing to add a footnote to Part I that would clarify that:

The definitions in Part I to the PORTAL Rules shall include the plural form of the term and the past tense and future tense of the term, as applicable.

Finally, the PORTAL Rules have been amended to identify defined terms throughout the text by printing the defined terms in bold print. This should assist readers of the PORTAL Rules to easily identify those terms that are defined in part I.

Part II—Requirements Applicable to PORTAL Securities

Pursuant to discussion with the SEC's Division of Corporation Finance, we have clarified that PORTAL brokers are permitted to underwrite and participate in offerings of securities underwritten on a "best efforts" basis without complying with the "qualified institutional buyer" definition in Rule 144A(a)(1) as required by Rule 144A(d)(1). Those parts of Amendments Nos. 1 and 2 to the above-referenced rule filing that stated that PORTAL brokers would not participate in new offerings of securities in the PORTAL Market are hereby amended.[5]

PORTAL brokers will be permitted to participate in new offerings of securities in the PORTAL Market, but may only do so if the underwriting commitment is on a "best efforts" basis whereby the broker/dealer is not bearing any capital risk for the sale of the securities.

In light of this change, it appears inconsistent to permit a PORTAL broker to underwrite an offering of securities in the PORTAL Market and, yet, prohibit that PORTAL broker from submitting an application for approval of the securities as a PORTAL security. Therefore, the NASD is proposing to amend subsection 1(a) to Part II of the PORTAL Rules to permit PORTAL brokers, in addition to PORTAL dealers and PORTAL qualified investors, to make application for designation of a security as a PORTAL security. Subsection 1(a) to Part II is proposed to be amended to delete the words "PORTAL dealer or a PORTAL qualified investor", which are replaced by "PORTAL participant." [6]

Section 2(c)(iii) to Part II is proposed to be amended to clarify that the Association will consider a statement of counsel who is the senior legal counsel to the issuer, i.e. the general counsel, but will not accept a statement from any other employee or affiliate of the issuer.

The NASD is also proposing to amend section 3 to Part II of the PORTAL Rules to only permit an exception to the PORTAL security designation criteria in subsections 2(a)(2) and 2(a)(4). Therefore, the language of section 3 is amended to replace the hyphen in "subjections 1(a)(2)–(4)" and an "and." It does not appear appropriate to permit an exception from subsection 2(a)(3) which requires that the PORTAL security be eligible for deposit into and have been or will be deposited into the PORTAL depository system by the issuer or a PORTAL participant.

Part III—Requirements Applicable to PORTAL Dealers and PORTAL Brokers

Subsection 1(b)(1) to part III requires that PORTAL dealers be eligible to purchase securities under Rule 144A as it applies to a broker/dealer registered under section 15 of the Exchange Act. This provision has been amended to include the language previously in subsection 1(c) that specifies the particular information that the NASD requires to be submitted to make a determination whether a PORTAL broker meets the definition of a qualified institutional buyer under Rule 144A.

Subsection 1(b)(3) to part III requires PORTAL dealers and PORTAL brokers to be a member of the PORTAL account instruction system, if such membership is necessary. The NASD is amending the information provided in Amendment No. 1, at page 19, which stated that a PORTAL dealer and PORTAL broker applicant will be required to submit their agreement with the PORTAL account instruction system, International Institutional Delivery system ("IID"), to demonstrate their membership in that system. It has subsequently been determined that IID assigns an identifier to each IID participant. Therefore, Amendment No. 1 is amended to clarify that the NASD will request the IID identifier to determine whether the applicant is a member of IID as required by subsection 1(b)(3).

Subsection 1(b) has further been amended to reverse the order of subsections 1(b)(8) and (9). Former subsection 1(b)(8) has also been amended as follows, with deleted language in brackets:

agrees to purchase PORTAL securities only for PORTAL qualified investors or [, in the case of PORTAL dealers,] for their own account

As a result of the amendments to subsections 1(b)(8) and 1(b)(9), subsection 2(b) has been amended to clarify that a PORTAL broker is required to comply with subsections 1(b)(2) through 1(b)(8) and agrees to purchase PORTAL securities only for PORTAL qualified investors. Thus, a PORTAL broker is not required to comply with new subsection 1(b)(9) which requires that PORTAL dealers agree to purchase securities only for their own account and for PORTAL qualified investors. PORTAL brokers are prohibited from purchasing PORTAL securities for their own account as they are not designated in the PORTAL market as a PORTAL dealer which meets the qualified institutional buyer criteria of Rule 144A.

Section 3 to Part III is proposed to be amended to reflect the above-referenced interpretation of SEC staff that for purposes of compliance with Rule 144A(d)(1), a PORTAL broker is permitted to underwrite an offering of PORTAL securities if the underwriting commitment is on a "best-efforts" basis. Therefore, section 3 to part III is amended to clarify as follows:

(a) No PORTAL broker shall execute a principal transaction in a PORTAL security, *provided, however, that a principal*

[3] Securities Exchange Act Release No. 27470 (November 24, 1989), at pp. 22–23; 54 FR 59164 (November 29, 1989), at p. 49168.

[4] New language is italicized.

[5] The NASD wishes to clarify that it believes that under Rule 144A, broker/dealers that engage in riskless principal transactions must meet the definition of a qualified institutional buyer under Rule 144A(a)(1). Therefore, PORTAL brokers are prohibited from engaging in principal transactions and riskless principal transactions in the PORTAL Market and from underwriting an offering of securities on a "firm-commitment" basis.

[6] A PORTAL participant is a PORTAL delaer, PORTAL broker and a PORTAL qualified investor.

transaction shall not include an offering of PORTAL securities if the underwriting commitment is on a "best-efforts" basis.[7]

The NASD is also proposing to amend subsection 3(d) to Part III of the PORTAL Rules to require PORTAL dealers and PORTAL brokers in new subprovisions 3(d)(2) and 3(d)(3) to notify the NASD on a timely basis of any change in:

(2) the account numbers identifying its segregated PORTAL accounts in its PORTAL depository organization or PORTAL clearing organization; and

(3) any change in the supervisory procedure previously accepted by the Association pursuant to part III, Subsection 1(b)(7) of the PORTAL Rules.[8]

The purpose of these changes is to ensure that the NASD remains current with respect to the obligations of PORTAL brokers and PORTAL dealers to maintain segregated PORTAL accounts at the PORTAL depository and clearing systems and to have a supervisory procedure for compliance with the restrictions in the PORTAL Rules on exit transactions and exit transfers. The word "advise" in subsection 3(d) has been changed to "notify" as more specific. The NASD is also amending subsection 3(d) to indicate that the notification required by subsection 3(d) must be provided to "the Association" rather than to "PORTAL Operations". An asterisk next to the word "Association" relates to a footnote that specifies that the information should be provided to NASDAQ Operations, 1735 K Street NW., Washington, DC 20006 (202) 728-8479. Until a PORTAL qualifications department is formally designated, persons in NASDAQ Operations will be responsible for the review of applications of PORTAL participants and applications with respect to PORTAL securities. The NASD believes that the required notification should not be made to PORTAL Operations which operates the technical aspects of the PORTAL Market but to the persons responsible for qualifications as the information to be provided affects whether a PORTAL dealer or PORTAL broker remains eligible to participate in the PORTAL Market. It is anticipated that the footnote reference will be changed as a change occurs in the identify the appropriate department or party to whom notification should be provided.

The NASD is proposing to amended subsection 3(e) to clarify that the registration of a PORTAL dealer or PORTAL broker "shall" be, rather than "may" be, suspended or terminated for failure to comply with subsections 3(e)(1)–(3) which relate to maintaining segregated PORTAL accounts at the PORTAL depository and clearing organizations and membership in the PORTAL account instruction system and to the requirement that information be provided to the NASD with respect to the PORTAL account activity. Subsection 3(e)(1) has been amended to clarify that failure to maintain membership in the PORTAL depository and clearing systems for purposes of "maintaining segregated PORTAL accounts" will result in suspension or termination from the PORTAL Market.

Subsection 3(e)(3) has been amended to clarify that a PORTAL dealer and PORTAL broker will be suspended or terminated from the PORTAL Market if the dealer or broker "rescinds its authorization" to the PORTAL clearing organization or PORTAL depository organization to release information in respect of its PORTAL account activities to the Association or its designee. The language has been deleted that focused on whether the PORTAL depository or clearing organization's "fails to release information" as not appropriately reflecting that the depository and clearing organizations will continue to comply with instructions from a participant to release information to the NASD so long as the instructions remain outstanding. The model letters with respect to establishing a PORTAL account at a PORTAL depository will instruct the particular organization to advise the PORTAL clearing organization; International Securities Clearing Corporation ("ISCC"), if the PORTAL dealer or PORTAL broker rescinds its authorization to release information.

The NASD is requesting ISCC to normally agree to notify the NASD of any advise received from the PORTAL depository organization that the PORTAL dealer or PORTAL broker has rescinded its authorization to release information or has closed or will close its PORTAL account therein. The NASD is further requesting that ISCC undertake to advise the NASD when a PORTAL dealer or PORTAL broker closes or will close its PORTAL account at ISCC or rescinds its instructions to ISCC to release information to the NASD in respect of its PORTAL account activity. In this connection, ISCC has advised the NASD of a modification to the last sentence on page 25 of Amendment No. 1, to wit: Cedel will advise ISCC and ISCC will advise the NASD of any withdrawal of a PORTAL dealer or PORTAL broker from their PORTAL account in the CEDEL-ISCC link.

New subsection 3(f) is proposed to be added to Part III that will include subprovisions that were previously denominated subsections 3(e)(4) through (6). The purpose of the new provision is to distinguish between those actions of non-compliance with PORTAL Rules by a PORTAL dealer or PORTAL broker requiring suspension or termination of their designation in the PORTAL Market and those actions which may or may not lead to suspension or termination depending upon the circumstances and particularly whether the non-compliance is inadvertent and technical or is intentional. As a result of the addition of new subsection 3(f), prior subsections 3(f) and 3(g) are denominated 3(g)and 3(h).

Subsection 3(g), previously subsection 3(f), to Part III of the PORTAL Rules is proposed to be amended to reference both subsection 3(e) and 3(f) as a result of the creation of new subsection 3(f).

The NASD is proposing to amend subsection 3(h), previously subsection 3(g), to clarify in subprovision 3(h)(1) that the PORTAL securities in a PORTAL dealer's "*PORTAL* trading account" and "*PORTAL* priority account" remain subject to the PORTAL Rules notwithstanding the suspension or termination of the PORTAL dealer.[9]

Part IV—Requirements Applicable to PORTAL Qualified Investors

Subsection 1(b)(3) to part IV is proposed to be amended to clarify the role of a PORTAL qualified investor's agent in maintaining PORTAL securities in a segregated account at the PORTAL depository organization.

To clarify the discussion on page 32 of Amendment No. 1 regarding subsection 1(b)(3), it is anticipated that in most instances the investor will access the PORTAL depository organization through an agent bank that will have a PORTAL account at the depository.

Subsection 1(b)(8) to part IV is proposed to be amended to delete language that required an applicant's agent to agree to maintain PORTAL securities in a segregated PORTAL account at the PORTAL depository organization. The language has been revised to clarify that the applicant alone must agree to maintain PORTAL securities in a segregated PORTAL account at the PORTAL depository organization and at its agent until the securities are sold or transferred in a transaction permitted by the PORTAL Rules.

[7] New language is italicized.

[8] New language is italicized.

[9] New language is italicized.

Subsection 1(b)(9) to part IV is proposed to be amended to delete the word "beneficial" before the word "ownership".

Subsection 1(d)(2) to part IV is proposed to be amended to delete the requirement that the audited and certified statement of the investor's securities be "prepared in a manner that complies with the requirements of Rule 144A(a)(1)". The NASD believes that the proposed deleted language is confusing. The proposed deleted language seems to indicate that Rule 144A includes a provision that specifies how a statement of the issuer's securities would be prepared. The provision was intended to make clear that the statement of the investor's securities must be prepared on a basis that permits the NASD staff to make a determination as to whether the investor meets the definition of a "qualified institutional buyer" in Rule 144A. Thus, if the SEC should rely on an historical cost test for the issuer's investments, the statement should reflect historical cost rather than market value. In order to avoid confusion, the NASD is proposing to delete the language as unnecessary. Should the NASD determine that the statement is inadequate, the PORTAL Rules provide authority in subsection 1(d)(4) for the NASD to request "any other information" that it may require.

Subsection 2(a)(2) to part IV is proposed to be amended to require that a PORTAL qualified investor "notify" (not "advise") "the Association" (not "PORTAL Operations") of any change in its agent, PORTAL depository organization or PORTAL account instruction system. As discussed more fully above in connection with part III, a footnote reference is included to require notification to be provided to NASDAQ Operations in Washington, DC. The NASD will change the footnote reference as changes occur in the party and department to whom notification is required.

The provision has also been revised to require that PORTAL qualified investors also notify the NASD regarding any change in their PORTAL account numbers at the referenced entities. The purpose of requiring advice to PORTAL Qualifications is that the required information affects whether the PORTAL qualified investor remains eligible to participate in the PORTAL Market. The model letters with respect to a PORTAL qualified investor or its agent establishing a PORTAL account at a PORTAL depository organization will instruct the particular organization to advise the PORTAL clearing organization, ISCC, if the PORTAL qualified investor or its agent rescinds its authorization to release information.

The NASD is requesting ISCC to formally agree to advise the NASD of any advice received from the PORTAL depository organization that a PORTAL qualified investor or its agent has rescinded its authorization to release information or has closed or will close its PORTAL account therein.

Subsection 2(d) to Part IV has been revised to parallel more closely the provision previously in subsection 1(c) to Part III, now moved to subsection 1(b)(1).

Part V—Denial, Suspension or Termination Procedures

This provision permits a person aggrieved by the Association's determination to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant to apply under Article IX of the NASD Code of Procedure for review of the determination. The NASD will file a separate rule change to make a coordinating amendment to section 1 to Article IX of the Code of Procedure to expand the scope of the Article to cover PORTAL Market matters.

Part VI—PORTAL Market Transactions

Section 2 to Part VI is proposed to be amended to add the words "from PORTAL dealers and PORTAL brokers" to clarify that the PORTAL Market will accept prices and quotations form PORTAL dealers and PORTAL brokers.

Section 3 is proposed to be amended to replace the reference to "the return of borrowed securities" with the defined term "qualified exit transfer." This amendment does not change the meaning of the section but utilizes the term "qualified exit transfer" which is defined as the return of borrowed PORTAL securities to an account outside the PORTAL Market from which the securities were borrowed.

Subsection 4(a) to Part VI is proposed to be amended to add the words "execution of the" to clarify that transactions in the PORTAL Market will settle five days after the date of execution of the transaction. This section is also proposed to be amended to add the word "depository" in the place of "clearing" to appropriately identified that currency in which the transaction settles must be one acceptable to the PORTAL depository organization.

Subsection 4(b) to Part VI is proposed to be amended to add the words "in accordance with the depository organization's procedures" at the end of the sentence in order to clarify the provision.

Subsection 5(a) is proposed to be amended to delete the word "effects" prior to "a qualified exit transfer". The revised rule language as amended herein and in Amendment No. 2 is as follows:

> Each PORTAL dealer and PORTAL broker that executes a transaction or [effects] a qualified exit transfer in a PORTAL security shall enter in the PORTAL Market a PORTAL transaction report * * *.[10]

Thus, PORTAL dealers and PORTAL brokers are not required to enter a transaction report with respect to transfers within the PORTAL Market nor with respect to transfers of PORTAL securites into the PORTAL Market. As stated at page 4 of Amendment No. 2, all PORTAL transaction reports must result in settlement instructions to the PORTAL depository organization. An entry transfer does not require settlement instructions to the depository regarding the receipt of securities in a transfer from outside the PORTAL Market. Therefore, the original requirement in Amendment No. 1 that a PORTAL transaction report be entered for transfers into the PORTAL Market was deleted in Amendment No. 2. With respect to transfers between PORTAL accounts, the same rationale applies and there is no regulatory purpose served by surveillance of intra-PORTAL transfers.

Subsection 5(c) to Part VI of the PORTAL Rules is proposed to be amended as follows, with additions italicized and deletions in brackets:

> (c) PORTAL transaction reports shall be entered in the PORTAL Market the same business day of the execution of the transaction. If a transaction is executed during hours that the PORTAL Market does not accept PORTAL transaction reports, the PORTAL transaction report shall be entered [the next business day] *when the PORTAL Market is next open,* with the trade date of the [prior business day] *date of execution of the transaction.* The Association, in its discretion, will establish hours for and time limitations on the entry of PORTAL transaction reports.

The current language of the provision assumes that transactions executed outside of normal PORTAL Market business hours will occur after the close of the business hours but before the commencement of the next business day. The purpose of this amendment is to address the situation where a transaction is executed on the same business day that the PORTAL Market is open for business but prior to the commencement of normal business hours for the PORTAL Market. The language has been amended therefore,

[10] Deleted language is in brackets.

to address all situations where PORTAL transactions are executed outside of normal PORTAL Market hours of operation, including during the night of the prior business day and during the morning of the current business day.

Section 6 to Part VI is proposed to be amended to clarify the obligations of PORTAL participants to confirm PORTAL transaction reports so that the transaction can be compared. Subsection 6(a) has been modified to only relate to the obligations of PORTAL qualified investors. The provision has been modified as follows, with deletions in brackets and additions italicized.

Each PORTAL [participant] *qualified investor* [that executes a transaction in a PORTAL security] shall [enter in the PORTAL Market whether the PORTAL transaction report is affirmed or rejected] *affirm or reject the PORTAL transaction report entered by the PORTAL qualified investor's executing PORTAL dealer or PORTAL broker.*

The NASD believes that these amendments clearly state the obligation of a PORTAL qualified investor to affirm or reject the PORTAL transaction report that has been entered by the investor's executing PORTAL dealer or PORTAL broker.

Subsection 6(b) is proposed to be amended to include in that provision all of the alternative methods by which a PORTAL dealer or PORTAL broker can confirm a PORTAL transaction report. Moreover, additional language has been added to clarify the provisions. The PORTAL Rules do not specify whether it is the obligation of the buyer or seller to enter a PORTAL transaction report in a particular instance as such specificity serves no regulatory purpose. If there should be a misunderstanding as to which party is obligated to enter a PORTAL transaction report and none is entered by either party, then both parties would find an open transaction at the end of the day. It is logical that they would contact one another to rectify the situation. If both parties enter a PORTAL transaction report, the two PORTAL transaction reports will be compared pursuant to subsection 6(b)(1) or (2) and will result in either a locked-in trade or a rejected transaction depending on whether the terms of both reports are the same or are different.

Subsection 6(b) to Part VI has been amended a follows, with additions italicized and deletions in brackets:

(b) Each PORTAL dealer and PORTAL broker that executes a transaction in a PORTAL security [may, as an alternative to paragraph (a)] shall:

(1) accept a PORTAL transaction report *entered by the contra-party by entering in the PORTAL Market a [second] matching PORTAL* transaction report with the same terms as the first PORTAL transaction report; [or]

(2) reject a PORTAL transaction report *entered by the contra-party* by entering a second *PORTAL* transaction report with different terms than the first *PORTAL* transaction report; *or*

(3) enter an affirmation or rejection with respect to the PORTAL transaction report entered by the contra-party.

The NASD believes that the revised rule language of subsection 6(b) to Part VI clearly sets forth the obligation of PORTAL dealers and PORTAL brokers to confirm a PORTAL transaction report.

Section 9 to Part VI is proposed to be amended to replace the term "managing underwriter" with "lead manager", as more reflective of the terms used on the PORTAL Market computer screens.

Subsection 11(d)(1) is proposed to be amended to delete the second sentence of the provision in its entirety. The sentence is drawn from the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities, Article III, section 1 of the Rules of Fair Practice ("Interpretation"). Section (a)(4) of the Interpretation defines the term "affirmative determintion", but does so only with repsect to a long-sale transaction. Section 11 relates only to "short" sale transactions and in that context the Interpretation does not provide a definition for the term "affirmative determination". Reference should be made, however, to NASD Notice to Members 86–69 (October 10, 1986) which announced amendments to the Interpretation with respect to "short" selling. The notice included the following:

In adopting this new provision for "short" sales, the Board of Governors stated that the requirement to make an "affirmative determination" does not permit members to make assumptions with respect to a customer's ability to deliver securities in a "short" sale situation. A member must specifically ask the customer whether the securities will be delivered by settlement so that the member may determine whether it must borrow the securities on behalf of the customer for delivery by settlement. The Board chose not to establish a single method for members to demonstrate their compliance with the new requirements, but found it appropriate that the rule allow members the flexibility to design their own procedures.

In light of the clarification provided by the excerpt from the foregoing notice to members, the NASD believes it appropriate to delete the second sentence of subsection 11(d)(1) as not applicable to "short" sales.

Part VII—Rules of Fair Practice

The current PORTAL Rules indicate in subsection (b)(2) that the Interpretation of the Board of Governors—NASD Mark-Up Policy, Article III, section 4 of the Rules of Fair Practice ("Mark-Up Policy") is applicable to transactions and business activities in the PORTAL Market but clarifies that it is anticipated that mark-ups may vary in light of the different circumstances of private placement resale transactions pursuant to Rule 144A. Technically, this clarification is not an exception from compliance with the Mark-Up Policy. The Mark-Up Policy itself includes clarification of its application to unusual situations.

There is no intention to relieve members of their obligation to comply fully with the Mark-Up Policy. Therefore, part VII is proposed to be amended to delete subsection (b)(2), redesignating subsections (b)(3) and (b)(4) as (b)(2) and (b)(3), and adding a reference to the Mark-Up Policy as new subsection (a)(7).

Amendment to Code of Procedure. Part V of the PORTAL Market Rules approved by the Board of Governors permits a person aggrieved by the Association's determination to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant [11] to apply under Article IX of the NASD Code of Procedure for a review of the determination. The NASD is hereby proposing a conforming rule change to section 1 to Article IX of the Code of Procedure to expand the scope of the Article consistent with Part V of the PORTAL Rules.

Minor Amendments. The NASD also proposed in Amendment No. 5 to make a number of minor amendments to the PORTAL Market Rules. The amendments are to part I, subsections 12 and 15; part III, subsections 1(b)(1), 1(b)(7), 3(b)(5), 3(d), 3(e)(1); part IV, subsections 1(b)(9), 1(b)(10), 1(b)(11), 1(d)(1), 1(d)(2); and part VI, subsection 6(b)(2). The amendment to part IV, subsection 1(d)(1) to delete the reference to an "audited and certified statement" is intended to delete an unnecessary reference as the requirements of Rule 1–02 of SEC Regulation S–X requires that the statement be audited and certified.

[11] Pursuant to the PORTAL Rules filed in SR–NASD 88–23, Amendment No. 1, the term "PORTAL participant" is defined as a PORTAL dealer, PORTAL broker or PORTAL qualified investor. Reference should be made to Part I of the PORTAL Rules for other definitions of terms used in this filing.

Statutory Basis. In Amendment No. 1, the NASD relied on section 11A(a)(2) of the Exchange Act, as well as section 15A(b)(6) as the statutory basis for the proposed rule change. Although the focus of section 11A(a)(2) is the creation of a national market system, the NASD referenced that part of the provision that addressed the creation of a trading system "* * * for particular types of securities with *unique trading characteristics* * * *" (emphasis provided). The PORTAL Market securities would have unique trading characteristics as the PORTAL Market would create a regulated trading system for transactions in restricted securities pursuant to proposed Rule 144A. The PORTAL Market is also intended to enforce the obligations of PORTAL participants, including NASD members, to comply with Rule 144A with respect to resales of restricted securities. This purpose is consistent with section 15A(b)(2) which requires that the rules of the NASD enforce compliance by its members with the federal securities laws.

The NASD wishes to clarify the scope of its obligations under section 11A(b)(5)(A) as a result of its reliance on section 11A(a)(2) under the Exchange Act. The NASD believes that under most circumstances it appears to be contrary to the purposes of section 15A(b)(2) and the private nature of the exemption from registration under section 5 of the Securities Act of 1933 proposed by Rule 144A for the NASD to provide quotation or transaction information to any vendor or other person for dissemination as required by section 11A(b)(5)(A). Dissemination of PORTAL Market quotations or transactions to non-PORTAL participants could be considered a public solicitation for transactions in the PORTAL Market and bring into question whether PORTAL Market transactions are in compliance with Rule 144A.

In addition, the Association believes the proposed rule change is consistent with section 15A(b)(11) which requires that "The rules of the Association govern the form and content of quotations relating to securities sold otherwise than on a national securities exchange * * *" on the basis that the proposed PORTAL Market will provide for the publication and dissemination of quotations relating to securities that are not sold on a national securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed amended rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49164 (November 29, 1989). One comment was received in response thereto from J. P. Morgan Securities, Inc. The commentator urged that the PORTAL Rules be amended to permit PORTAL securities to exit the PORTAL Market in a "qualified exit transaction" pursuant to Rule 144A. The commentator expressed concern that the transaction efficiencies provided by the PORTAL Market may not be great enough to outweigh the disadvantages that would result because PORTAL securities are unable to exit the PORTAL Market into the U.S. market except in a transaction where the purchaser would acquire a freely-tradeable security.

As indicated above, the NASD is proposing to amend the definition of "qualified exit transaction" to include a provision that would permit PORTAL securities to exit the PORTAL Market pursuant to Rule 144A, as determined by the Association, upon the submission of an opinion of counsel prior to the transaction.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: February 8, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3376 Filed 2-8-90; 1:43 pm]

BILLING CODE 8010-01-M

[Release No. 34-27677; File No. SR-NYSE-90-03]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Standards for Communication With the Public

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 17, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securites and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE has filed a proposed rule change to amend Exchange Rule 472.30 relating to standards for communication with the public. Rule 472.30 sets forth the general standards applicable to all member organization communications with the public including, but not limited to, advertisements, research reports, and sales literature. These general requirements include standards of truthfulness and good taste as well as prohibitions against the use of any communication which contains untrue statements, omissions of material fact, promises of specific results, exaggerated claims and other similar practices. Rule 472.30 also refers to Exchange review of

member organization communications. The Exchange proposes to delete the "good taste" provision and the Exchange review provision of Rule 472.30.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*—The Exchange believes that the "good taste" provision of Rule 472.30 is too subjective a standard to enable effective and consistent determinations of compliance with Exchange rules. Existing standards, (*i.e.*, the remainder of Rule 472.30 and other applicable anti-fraud provisions of Exchange and federal securities regulations), serve as a deterrent to certain language or practices that might otherwise be covered under the good taste standard. Further, the ever-increasing professionalization of our member organizations' advertising, marketing, research and compliance personnel and practices, over the past several years, has significantly increased the overall quality of public communications.

The NYSE proposes to delete the paragraph of the Rule relating to Exchange review activities of member organization material since the Exchange plans to discontinue its voluntary pre-clearance service[1] and will no longer conduct formal, biannual spot checks of communications prepared or distributed by members and member organizations. Alternate procedures, based on branch office examinations, will be implemented.

This proposal will not affect option communication standards set forth in rule 791.

2. *Statutory Basis*—The proposed amendments are consistent with section 6(b)(5) of the Act which requires that an exchange have rules that are designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and in general, to protect investors and the public, in that the amended provision will continue to set forth a basic standard of truthfulness as well as specific standards in all communications of members and member organizations with the public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-90-03 and should be submitted by March 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 6, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3262 Filed 2-9-90; 8:45 am]

BILLING CODE 8010-01-M

[1] This service allows member organizations to submit communications to Exchange staff for pre-use review. A $25 fee is incurred per submission.

[File No. 81-826]

Application and Opportunity for Hearing; the Mirage Casino-Hotel

February 6, 1990.

Notice is hereby given that the Mirage Casino-Hotel ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested person, not later than March 5, 1990 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice 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 postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3185 Filed 2-9-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-843]

Application and Opportunity for Hearing, Parsons Brinckerhoff Inc.

February 6, 1990.

Notice is hereby given that Parsons Brinckerhoff Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 15(d) of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interesed person, not later than March 5, 1990 may submit to the commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice 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) any any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-3186 Filed 2-9-90; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Generalized System of Preferences; Withdrawal of Petition Under the 1989 Annual Review

This publication provides notice that a review concerning the expropriation of certain U.S.-owned properties by the Government of Venezuela (case number 002-CP-89) is being terminated at the request of the petitioner, the Occidental Petroleum Corporation. The Trade Policy Staff Committee (TPSC) had formally initiated the review of this case as part of the 1988 Annual Review in a notice of July 20, 1988 (53 FR 16303). This review was extended into the 1989 Annual Review, as announced in a notice of August 10, 1989 (54 FR 32891). The Generalized System of Preferences (GSP) is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465).

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90-3258 Filed 2-9-90; 8:45 am]

BILLING CODE 3190-01-M

Generalized System of Preferences: Procedures for Considering Requests To Reinstate Beneficiaries Suspended or Removed From Eligibility

AGENCY: Office of the United States Trade Representative (USTR).

SUMMARY: The purpose of this notice is to provide information to all interested parties regarding the process the Trade Policy Staff Committee (TPSC) shall use in responding to requests to reinstate Generalized System of Preferences (GSP) eligibility for those beneficiaries which have been suspended or removed from GSP after a review of the eligibility criteria contained in the GSP statute. GSP regulations describe the process for reviewing petitions requesting that a beneficiary be removed from GSP for not meeting the eligibility standards of the law. This same procedure is to be followed when reviewing requests to reinstate GSP except that the timetable will be modified. Authority to make such modifications is provided for in § 2007.3(a) of the current regulations. The modification would allow former beneficiary governments to petition for reinstatement at any time, and adjusts the review period, as required in each case.

FOR FURTHER INFORMATION CONTACT: Requests and questions regarding this notice should be directed to the GSP Information Center at USTR at 600 17th Street, NW., Washington, DC 20506; the phone number is (202) 395-6971.

SUPPLEMENTARY INFORMATION: During GSP annual and general reviews, interested parties may file a request to have the GSP status of an eligible beneficiary reviewed with respect to the designation criteria listed in subsections 502(b) or 502(c) of the GSP statute (19 U.S.C. 2642 (b) and (c)). These criteria, known as "country practice" standards, include expropriating U.S. property without good faith efforts to provide prompt adequate and effective compensation, failing to act in good faith in recognizing arbitral awards, aiding or abetting international terrorism, failing to take steps to provide internationally recognized worker rights, failing to provide equitable and reasonable market access, and failing to provide adequate and effective intellectual property rights protection. The existence of trade distorting investment measures and barriers to trade in services are two additional criteria that can be used to evaluate the eligibility of beneficiary countries. As a result of country practice reviews conducted since these provisions were added to the law in 1984, several GSP beneficiaries have had their GSP eligibility suspended, or withdrawn. Current suspended beneficiaries include Chile, Paraguay, Burma and the Central African Republic. Beneficiaries removed from the program include Romania and Nicaragua. All were removed after reviews of their worker rights practices. Ethiopia was also removed in 1980 after a review of an expropriation case.

Petitions will not be considered regarding reinstatement of beneficiaries graduated from the program on the basis of their economic growth and level of development.

Current regulations (15 CFR 2007) do not describe a process for considering restoration of GSP eligibility. The governments of Paraguay, Chile and the Central African Republic have now formally requested that such a reinstatement be made. To provide guidance to all interested parties, the process to be followed in considering such requests is clarified below. The process to be followed in considering requests for restoration of GSP eligibility will be the same process that applies for reviewing petitions requesting that a beneficiary be removed from GSP with one modification. The timetable for such reviews has been modified. Authority to make such modifications is contained in current regulations (15 CFR 2007.3(a)) and has been frequently used in the past to extend the review period for country practice cases.

Country practice petitions are considered in a two-stage process. During an annual or general review, any interested party may file a petition requesting reinstatement. The first stage of the review is to determine whether petitions meet regulatory information requirements and should thus be accepted for a full review. Current regulations specify that a petition should include "a statement of reasons why the beneficiary country's status should be reviewed along with all available supporting information." Requests which do not "provide sufficient

information relevant to subsections 502(b) and 502(c) to warrant review", or which "do not fall within the criteria" of these subsections, "shall not be accepted for review". Petitions requesting reinstatement should meet these same standards. Petitions should also address the problems identified during the prior review which resulted in the removal of GSP and describe the change in circumstances since that review. Petitions may also address improvements made in other areas of the relevant country practice standard, as well as conditions related to other GSP eligibility standards. Public files of prior cases are available to all interested parties from the USTR Public Reading Room; the telephone number is (202) 395–6186.

Annual reviews begin with a filing deadline each June 1. As noted above, existing regulations allow this schedule to be modified by publishing a notice in the **Federal Register**. This notice hereby modifies the timetable as follows. In order to encourage their participation and progress in resolving country practice issues, requests for reinstatement submitted by the governments of former beneficiaries will be considered at any time. Petitions from non-governmental parties will be accepted during the standard annual or general review filing period (June 1 each year, unless otherwise modified).

A petition which meets these requirements, and for which further consideration is deemed warranted, shall be accepted for formal review. Petitions which do not conform to these requirements shall not be accepted for further review, and an explanation provided to the petitioner upon written request. Decisions to accept petitions for review will be made as quickly as possible, but no fixed decision date will be set.

As with any other petition accepted for full review, acceptance of a request for reinstatement of GSP eligibility will include the opportunity for interested parties to participate in a public hearing and an extended written comment period.

Once formally initiated, reinstatement reviews will not be required to follow the usual time guidelines of an annual or general review. When a petition is accepted, a review schedule will be published. The reinstatement schedule may specify a complete review schedule, including anticipated decision and resultant implementation dates, or may include only the public hearing date and comment deadlines, with public notice of the remaining schedule to be published as soon as appropriate. The purpose of this modification is to allow sufficient time to determine the extent and significance of changes in law and practice. If, following a review, no change is made in the status of the former beneficiary, the GSP Subcommittee will notify the party submitting the request of the reasons why action was not taken.

David A. Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 90–3259 Filed 2–9–90; 8:45 am]

BILLING CODE 3190–01–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 February 2, 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, confirming 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: 46766.

Date filed: January 31, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 1990.

Description: Application of Loken Aviation, pursuant to section 401 of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled, interstate air transportation of persons, property and mail between the terminal point Juneau, Alaska, and the intermediate point Cube Cove, Alaska.

Docket Number: 46767.

Date filed: January 31, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 28, 1990.

Description: Application of Aerolineas Latinas, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a foreign air carrier permit to operate all cargo charter and all-cargo non-scheduled air services between Venezuela and the co-terminal points of Miami/Ft. Lauderdale, San Juan, Houston, New York and Los Angeles.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–3179 Filed 2–9–90; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CCGD2–90–01]

Second Coast Guard District Industry Day; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 13 March 1990, the Commander, Second Coast Guard District, will sponsor an Industry Day program to provide for an open exchange of information, ideas, and opinions on matters of mutual interest or concern to the inland marine community and the Coast Guard. The Industry Day activities will be held at the Breckenridge-Frontenac Hotel, 1335 South Lindberg, St. Louis, Missouri.

The scehdule of events for Industry Day is:

Monday, 12 March:

5:00–8:00 p.m. Registration in the hotel lobby for early arrivals.

Tuesday, 13 March:

7:30 a.m. Registration continues.

8:30 a.m. General Session: greeting, opening comments, Industry Day Presentations.

11:30 a.m. No host buffet luncheon.

1:00 p.m. Panel Discussions: Three separate small group panels focusing on Towing Industry, Shore Side Facilities and Small Passenger Vessel Industry.

4:30 p.m. Industry Day concludes.

Advance registration and payment of the $22 conference fee (which includes the cost of the luncheon) is required. Persons desiring registration forms or additional information on the Industry Day activities, including events scheduled by other groups to coincide with Industry Day, should contact one of the officers named below. Recommendations for discussion topics are requested and will be considered in developing the final agenda. Such recommendations must be submitted in writing to the officers named below. All registration forms and recommendations must be received by 23 February 1990.

DATES: As listed in the schedule of events above.

FOR FURTHER INFORMATION CONTACT: Commander John D. Koski or Lieutenant Bruce D. Ward, Commander (mpb), Second Coast Guard District, 1430 Olive Street, St. Louis, Missouri, 63103–2398,

Telephone: Commercial (314) 425–4655, FTS 279–4655.

Dated: January 31, 1990.

W.J. Ecker,

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

[FR Doc. 90–3181 Filed 2–9–90; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Advisory Circular 25.803–1, Emergency Education Demonstrations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.803–1, Emergency Evacuation Demonstrations. This AC provides guidance on a means, but not the only means, of compliance with the Federal Aviation Regulations (FAR) concerning (1) conduct of full scale emergency evacuation demonstrations, and (2) use of analysis and tests for emergency evacuation demonstrations in lieu of an actual demonstration.

DATES: Advisory Circular 25.803–1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, on November 13, 1989. Now to Obtain Copies: A copy may be obtained by writing to the U.S. Department of Transportation, M–443.2, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on January 26, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–3210 Filed 2–9–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

ACTION: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 53 FR 41275, October 20, 1988, in accordance with 5 U.S.C. 4314(c)(4).

SCOPE: This notice applies to all components within the Department of the Treasury.

PURPOSE: The purpose of the board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, and certain other positions. The board makes recommendations to the Secretary or designee as appointing authority. The board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF PRB: The board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members of the PRB shall consist of career appointees. The names and titles of the PRB members are as follows:

Linda M. Combs—Assistant Secretary (Management)—Chairperson,
Jeanne S. Archibald—Deputy General Counsel,
William E. Barreda—Deputy Assistant Secretary for Trade and Investment Policy,
William E. Douglas—Commissioner, Financial Management Service,
Eugene H. Essner—Deputy Director, U.S. Mint,
William H. Gillers—Deputy to the Assistant Secretary (Management),
Richard L. Gregg—Commissioner, Bureau of Public Debt,
Carol Boyd Hallett—Commissioner, U.S. Customs Service,
Stephen E. Higgins—Director, Bureau of Alcohol, Tobacco and Firearms,
Michael F. Hill—Deputy Director, Bureau of Engraving and Printing,
Edith E. Holiday—General Counsel,
Michael H. Lane—Deputy Commissioner, U.S. Customs Service,
Gerald Murphy—Fiscal Assistant Secretary,
Michael J. Murphy—Senior Deputy Commissioner, Internal Revenue Service,
David M. Nummy—Deputy Assistant Secretary for Departmental Finance and Management,
Thomas P. O'Malley—Director, Management Programs Directorate,
Marcus W. Page—Deputy Fiscal Assistant Secretary,
Charles B. Respass—Deputy Assistant Secretary for Administration,
Charlene J. Robinson—Director, Human Resources Directorate,
Kenneth R. Schmalzbach—Assistant General Counsel (Administrative and General Law),
Charles Schotta—Deputy Assistant Secretary (Arabian Peninsula Affairs),
John P. Simpson—Deputy Assistant Secretary (Regulatory, Tarriff and Trade Enforcement),
John R. Simpson—Director, U.S. Secret Service,
Edwin A. Verburg—Director, Financial Services Directorate.

FOR FURTHER INFORMATION CONTACT: Jack R. Howard, Department of the Treasury, Assistant Director of Personnel, (Employment and Executive Services), Treasury Annex Building, Pennsylvania Ave. at Madison Place NW., Room 4150, Washington, DC 20220, Telephone: (202) 377–9225.

This notice does not meet the Department's criteria for significant regulations.

Dated: January 29, 1990.

Linda M. Combs,

Assistant Secretary (Management).

[FR Doc. 90–3178 Filed 2–9–90; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 29
Monday, February 12, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Matter To Be Added for Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matters will be added to the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2:00 p.m. on Tuesday, February 13, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC:

Proposal for an extension of time for solicitation of comments on and for a public hearing on proposed amendments to Parts 330 and 331 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage" and "Insurance of Trust Funds," respectively.

FDIC Minority and Women Outreach Program in Contracting for Goods and Services.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: February 7, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–3375 Filed 2–8–90; 12:37 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:05 p.m. on Tuesday, February 6, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) an administrative enforcement proceeding against an insured bank, (2) matters relating to the possible failure of an insured bank, (3) personnel matters, and (4) matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr., (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by M. Danny Wall (Director of the Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: February 7, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90–3319 Filed 2–8–90; 9:07 am]

BILLING CODE 6714–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Change in Time and Subject

The previously announced closed meeting (55 FR 3684, February 2, 1990) of the National Credit Union Administration scheduled for 10:30 a.m., Wednesday, February 7, 1990, was changed to 9:30 a.m., Wednesday, February 7, 1990.

The National Credit Union Administration Board also voted unanimously to delete the following item from that previously announced closed meeting on Wednesday, February 7, 1990.

Administrative Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The previously announced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Special Assistance under section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administration Action under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Personnel Actions and Agency Structure. Closed pursuant to exemptions (2), (5), (6), and (7).

The meeting was held at 9:30 a.m., in the Filene Board Room, 1776 G Street NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 90–3402 Filed 2–8–90; 2:01 pm]

BILLING CODE 7535–01–M

Corrections

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 3

[Federal Acquisition Circular 84-55]

Federal Acquisition Regulation (FAR); Anti-Lobbying

Correction

In rule document 90-2206 beginning on page 3190 in the issue of Tuesday, January 30, 1990, make the following correction:

§ 3.802 [Corrected]

On page 3192, in the first column, in § 3.802(c)(1)(iv)(A), in the second line, remove "bo" and insert in its place, "but necessary for an agency to make an informed decision about initiation of a ".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regs. No. 4 and 16]

RIN 0960-AC64

Determining Disability and Blindness; Substantial Gainful Activity

Correction

In rule document 89-30232 beginning on page 53600 in the issue of Friday, December 29, 1989, make the following correction:

On page 53606, in the second column, in the first complete paragraph, in the fourth line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4212-14; N-39982]

Battle Mountain District; Shoshone-Eureka Resource Area

Correction

In notice document 89-15118 appearing on page 27071 in the issue of Tuesday, June 27, 1989, make the following correction:

In the first column, under "Mount Diablo Meridian", the fifth line should read "Sec. 23, SE¼NE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[7-89-61]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

Correction

In proposed rule document 90-2563 beginning on page 3750 in the issue of Monday, February 5, 1990, make the following correction:

On page 3751, in the second column, the signature reading "Martin H.D. Nell," should read "Martin H. Daniell,"

BILLING CODE 1505-01-D

federal register

Monday
February 12, 1990

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket Number H-033-d]

Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting supplemental rulemaking on its standards, issued June 17, 1986 (51 FR 21612, June 20, 1986) for occupational exposure to asbestos, tremolite, anthophyllite, and actinolite in general industry, 29 CFR 1910.1001, and in the construction industry, 29 CFR 1926.58. These standards revised the 1972 standard covering asbestos exposure, reduced the PEL tenfold from 2 f/cc to 0.2 f/cc and updated other requirements.

On July 18, 1986 OSHA decided to reopen the rulemaking record, review relevant new evidence received after the record closed, and reconsider its decision to regulate non-asbestiform tremolite, anthophyllite, and actinolite in the same manner as asbestos. OSHA also issued a nine-month administrative stay of enforcement of the standards (51 FR 37002, October 17, 1986) insofar as they apply to occupational exposure to non-asbestiform tremolite, anthophyllite, and actinolite. It reissued the 1972 standard (renumbered as 29 CFR 1910.1101) to provide continuity of protection until OSHA completes rulemaking on whether and how to regulate non-asbestiform tremolite, anthophyllite and actinolite. OSHA has extended the stay until November 1990 to provide time to complete this supplemental rulemaking (54 FR 30704).

During the period of the temporary administrative stay, OSHA has reviewed available relevant evidence concerning the health effects of non-asbestiform tremolite, anthophyllite and actinolite and has also examined the feasibility of various regulatory options. Based on the entire record before it, OSHA proposes to lift the administrative stay, remove 29 CFR 1910.1101, and amend the revised asbestos standards (29 CFR 1910.1001; 1926.58) to remove non-asbestiform tremolite, anthophyllite and actinolite from their scope. This notice requests public comment and additional data and information on the issue of whether OSHA should take the action proposed, adopt some other alternative, or continue to regulate non-asbestiform tremolite, anthophyllite, and actinolite in the same manner as asbestos. Comment is also welcomed on other specific issues addressed in this notice.

DATES: Comments concerning this notice and notices of intention to appear at the public hearing must be postmarked on or before April 9, 1990. Parties requesting more than 10 minutes for their presentation at the hearing, and parties planning to present documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than April 23, 1990. The hearing will take place in Washington, DC and will begin at 10:00 am. on May 8, 1990.

ADDRESSES: Comments are to be submitted in quadruplicate to the Docket Officer, Docket H-033-d, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N2625, Washington, DC 20210; telephone (202)-523-7894.

Notices of intention to appear at the hearing, testimony, and documentary evidence should be submitted, in quadruplicate to Mr. Tom Hall, Division of Consumer Affairs, Docket H-033d, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3637, Washington, DC 20210; telephone (202)-523-8615.

Written comments received and notices of intention to appear will be available for inspection and copying in the Docket Office, Room N2625 at the above address.

The informal public hearing will begin at 10:00 a.m. at the following location: Auditorium, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3649, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The preamble discusses the mineralogic definitions of asbestiform and non-asbestiform minerals, the health effects evidence, and the regulatory options for regulating non-asbestiform tremolite, anthophyllite and actinolite. OSHA invites interested persons to submit written comments and evidence relevant to these issues and options.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.), and the regulations issued pursuant thereto (5 CFR part 1320), OSHA is required to submit the information collection requirements contained in its proposed standards to the Office of Management and Budget (OMB) for review under section 3504 (h) of that Act. However, in this proposal there are no information collection requirements.

Federalism

This proposed standard has been reviewed in accordance with Executive Order 12612, 52 FR 41685 (October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt State laws with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective as the Federal standards in providing safe and healthful employment and places of employment.

The Federally proposed standard is drafted so that employees in every State would be protected. To the extent that there are any State or regional peculiarities, States with occupational safety and health plans approved under Section 18 of the OSH Act would be

able to develop their own State standards to deal with any special problems.

Those States which have elected to participate under Section 18 of the OSH Act would not be preempted by this proposed regulation and would be able to deal with special, local conditions within the framework provided by this standard while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be fully considered prior to promulgation of a final rule.

State Plans

The 23 States and 2 territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months after the publication of a final standard for occupational exposure to non-asbestiform tremolite, anthophyllite and actinolite or amend their existing standard if it is not "at least as effective" as the final Federal standard. The states and territories with occupational safety and health state plans are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington, and Wyoming. (In Connecticut and New York, the plan covers only State and local government employees.)

II. Pertinent Legal Authority

The primary purpose of the Occupational Safety and Health Act (29 U.S.C. 651 et seq.) (The Act) is to assure, so far as possible, safe and healthful working conditions for every American worker over the period of his or her working lifetime. One means prescribed by the Congress to achieve this goal is the mandate given to, and the concomitant authority vested in, the Secretary of Labor to set mandatory safety and health standards. The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this and other health and safety laws. [Section 6(b)(5)]

Where appropriate, OSHA standards are required to include provisions for labels or other appropriate forms of warning to apprise employees of hazards, suitable protective equipment, exposure control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, appropriate medical examinations of other rests, they must be available at no cost to the employee [Section 6(b)(7)]. Standards may also prescribe recordkeeping requirements where necessary or appropriate for the enforcement of the Act or for developing information regarding occupational accidents and illnesses [Section 8(c)].

Section 3(8) of the Act, 29 U.S.C. 652(8), defines an occupational safety and health standard as follows:

> A Standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe or healthful employment and place of employment.

The Supreme Court has said that section 3(8) must be applied to the issuance of a permanent standard to determine that it is reasonably necessary and appropriate to remedy a significant risk of material health impairment (*Industrial Union Department* v. *American Petroleum Institute*, 448 U.S. 607 (1980)). This "significant risk" determination constitutes a finding that, in the absence of the changes in practices mandated by the standard, the workplaces would be "unsafe" in the sense that workers would be threatened with a significant risk of harm. (Id. at 642).

The Court indicated, however, that the significant risk determination is "not a mathematical straitjacket," and that "OSHA is not required to support its finding that a significant risk exists with anything approaching certainty." The Court ruled that a reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking error on the side of over protection rather than under protection" (448 U.S. at 655).

The Court also stated that "while the Agency must support its finding that a certain level of risk exists with substantial evidence, we recognize that its determination that a particular level of risk is 'significant' will be based largely on policy consideration." (488 U.S. at 655, n. 62). It is the Agency's burden to make this showing, based on substantial evidence that it is at least more likely than not that such a substantial risk exists.

After OSHA has determined that a significant risk exists and that such risk can be reduced or eliminated by the proposed standard, it must set the standard "which most adequately assures, to the extent feasible on the basis of the best available evidence, that no employees will suffer material impairment of health" (section 6(b)(5) of the Act). The Supreme Court has interpreted this section to mean that when adopted an OSHA standard must be the most protective possible to eliminate significant impairment of health, subject to the constraints of technological and economic feasibility (*American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981)).

In addition, section 4(b)(2) of the Act provides that OSHA's general industry standards would apply to construction and other workplaces where the Assistant Secretary has determined those standards are more effective than the standard which would otherwise apply.

In this document, OSHA is proposing that non-asbestiform tremolite, anthophyllite and actinolite no longer be regulated in the same way as asbestos, either under the 1972 asbestos standard republished as 29 CFR 1910.1101 or under the revised asbestos standards (29 CFR parts 1910.1001 and 1926.58). The basis for this proposal is the agency's preliminary determination that the available evidence supports a conclusion that exposure to non-asbestiform cleavage fragments is not likely to produce a significant risk of developing "asbestos-related" disease.

The inclusion of the non-asbestiform minerals under the 1972 standard and the 1986 revised standards was based on the Agency's view that non-asbestiform tremolite, anthophyllite and actinolite likely subjected exposed employees to a significant risk of asbestos related disease and therefore exposure to them should be regulated the same way as asbestos. Additional evidence and evaluations which have been submitted to OSHA have led to this reassessment of OSHA's views.

The Supreme Court, in *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.* (State Farm), (463 U.S. 29, 1983) held that "an Agency changing its course by rescinding a rule is obligated to supply a

reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance * * * 463 U.S. at 42. OSHA has stated the approach it will follow in raising or eliminating exposure limits in two places. Those are in its reconsideration of the exposure to cotton dust in the non-textile sector at 50 FR 51132–3, October 12, 1985 and in its Air Contaminants Final Rule 54 FR 2698, January 19, 1989.

The evidence must indicate that significant risk is unlikely to exist as a result of the change in the regulation. OSHA's final action in this rulemaking will be based on the direction of the Supreme Court in State Farm and will be consistent with OSHA's previous approach.

Also, the Supreme Court in its State Farm decision held that recission of a rule is arbitrary if, *inter alia*, the Agency does not consider an important aspect of the problem (463 U.S. at 43). The Court held that an essential component of reasoned decision making requires discussing why alternative ways of achieving the objectives of the Act cannot be adopted. OSHA believes that here it must consider such regulatory alternatives presented by its review of the record, or which are suggested by participants who show the significant benefit and feasibility of such recommendations.

Alternatives to removing these minerals from the asbestos standards are presented in the discussion on regulatory alternatives. OSHA will consider all such alternatives to the extent permitted by the record. OSHA's final action will either remove non-asbestiform tremolite, anthophyllite and actinolite from the scope of the asbestos standards, or adopt an alternative regulatory approach.

III. Regulatory History

OSHA first regulated asbestos in 1971, when, under authority of section 6(a) of the Occupational Safety and Health Act, it adopted the existing Federal standard for asbestos under the Walsh-Healey Public Contracts Act [29 CFR 1910.93, Table G–3 (36 FR 10466, May 29, 1971)]. The standard consisted of a permissible exposure limit listed in Table G–3 "Mine Dusts". The Walsh-Healey standard for tremolite was also adopted and separately listed in Table G–3.

Following an emergency temporary standard (ETS) for exposure to "asbestos dust" in 1971 (36 FR 23207, December 7, 1971), OSHA conducted rulemaking and issued a permanent standard under section 6(b) of the OSH Act, which regulated occupational exposure to asbestos. The standard defined asbestos as chrysotile, crocidolite, amosite, tremolite, anthophyllite, and actinolite [29 CFR 1910.93a (later renumbered as § 1910.1001); 37 FR 11318, June 7, 1972]. The 1972 standard regulated only fibers longer than 5 micrometers, measured by phase contrast illumination (37 FR 11318, 29 CFR 1910.1001 (1985)). Also at that time, OSHA deleted the entry for tremolite in Table G–3.

On October 18, 1972, OSHA made clarifying revisions to Table G–3. The existing permissible exposure limit for "talc" was explained to apply only to "non-asbestos form" talc, while new entries for "fibrous talc" and tremolite instructed readers to use the permissible limit for asbestos (37 FR 22102, 22142).

All major provisions of the standard which were initially challenged were upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Industrial Union Department, AFL–CIO* v. *Hodgson*, 499 F.2d 467 (1974).

Because the 1972 standard did not distinguish between the asbestiform and non-asbestiform tremolite, anthophyllite and actinolite, OSHA began to inspect employers whose employees were exposed to either mineralogic variety.

One supplier of industrial talc containing non-asbestiform anthophyllite and tremolite (the R.T. Vanderbilt Company) petitioned OSHA to restrict the application of the 1972 standard so that non-asbestiform anthophyllite and tremolite would not be covered by it. In October OSHA 1974 interpreted the applicability of the asbestos standard to mean only asbestiform tremolite with an aspect ratio of 5 to 1 (Letter from OSHA Assistant Secretary John Stender to R.T. Vanderbilt Company, August 6, 1974; OSHA Field Information Memorandum (FIM) #74–92, November 21, 1974) (Ex. 411). However, because of preliminary information received from NIOSH regarding medical evaluations of workers exposed to tremolitic talc, FIM #74–92 was cancelled on January 4, 1977 (Ex. 412). OSHA reverted to its regulatory definition of asbestos, which included all tremolite fibers, whether asbestiform or non-asbestiform.

In 1975 OSHA proposed to reduce the PEL and otherwise revise and tighten the asbestos standard to protect employees against carcinogenic effects of asbestos (40 FR 47652, October 9, 1975). No change was proposed concerning the six minerals defined as asbestos, but OSHA proposed to define "asbestos fiber" as a "particulate" instead of a "fiber," so as to stress its "morphology and toxicity * * * rather than its geologic or mineralogic origin." (40 FR 47658). It also proposed to add a three to one aspect ratio and a five micrometer maximum diameter to the definition of fiber in recognition of fiber respirability and the ACGIH recommended methods for fiber sampling and counting using phase contrast microscopy. No hearings were held on this proposal.

In 1983 OSHA issued an Emergency Temporary Standard (ETS) for asbestos, lowering the permissible exposure limit from 2 fibers per cubic centimeter (2 f/cc) to 0.5 f/cc (48 FR 51086, November 4, 1983). In the preamble to the ETS, which also constituted a proposal for a revised permanent standard, OSHA raised the possibility of revising the definition of "asbestos" and "asbestos fiber" and included an extensive discussion of the relative carcinogenicity and toxicity of different fibers (48 FR 51110–51121). As with the 1972 standard, OSHA concluded there was no basis to regulate fiber types differently (48 FR 51110). The ETS itself was vacated by the Fifth Circuit Court of Appeals on March 7, 1984.

In its supplemental proposed rule (49 FR 11416, April 10, 1984), OSHA said it was considering a revision of its definition of asbestos to conform to the practice of other federal agencies (the Mine Safety and Health Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, and the Department of Education) which regulated only mineralogically correct "asbestos". The definition under consideration would include only the asbestiform varieties of the six covered minerals. However, OSHA noted that health evidence existed implicating non-asbestiform minerals in the production of asbestos-related disease; that morphology may be a significant causative factor; and that the Agency would examine all relevant evidence before its final decision on coverage (51 FR 14122).

Several parties addressed the issue in written comments and in oral testimony during the rulemaking. A primary proponent of including only a "mineralogically correct" definition of asbestos was the R.T. Vanderbilt Company, a miner and producer of tremolitic talc (See generally Ex. 337). Vanderbilt claimed that health studies at its mine and mill do not show the presence of asbestos-related disease; and that therefore its products should not be regulated with the same stringency as asbestos. Other participants also supported limiting coverage to "mineralogically" defined asbestos (See e.g. Exs. 90–3 and 90–143).

Other commenters opposed excluding non-asbestiform tremolite, anthophyllite,

and actinolite from the scope of the standard. Public Citizen Health Research Group (Ex. 122; Tr. June 22, pp. 51–52) and the United Brotherhood of Carpenters and Joiners of America (Tr. June 28, pp. 168–172) contended that a revised asbestos standard should include these minerals because of their asbestos-like health effects. Their comments in part were based on the findings of the NIOSH studies of upstate New York talc miners and millers, working at Vanderbilt which found an excess of respiratory disease.

OSHA's final standards (29 CFR 1910.1001 and 1926.58) define "asbestos" as "chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, and any of these materials that has been chemically treated or altered" [29 CFR 1910.1001(b); 29 CFR 1926.58(b)]. However, these standards also regulate the non-asbestiform varieties of tremolite, anthophyllite, and actinolite. Only "fibers" of these materials are regulated; fibers are defined as particles of the covered materials which are five micrometers or longer with an aspect ratio of at least 3 to 1. These non-asbestiform "fibers" are regulated because OSHA determined that there was substantial evidence to support protection under the revised asbestos standards for workers exposed to non-asbestiform tremolite, anthophyllite and actinolite (51 FR 22631). The basis of these decisions was two-fold. One, to preclude a mineralogic debate concerning which minerals forms were recognized by mineralogists as "asbestos" and two, to protect employees from the health effects of the non-asbestiform varieties which the evidence indicated result in the same disease as related to asbestos exposure. OSHA, however, did not separately analyze the economic and technological feasibility of the revised provisions in industries using the non-asbestiform minerals.

Following issuance of the standards, a number of parties filed petitions in the Second, Fifth, and District of Columbia Circuit Courts of Appeals for review of the standards under section 6(f) of the OSH Act based on broad challenges to the standard's validity. On June 20, 1986, the R.T. Vanderbilt Company requested an administrative stay of the standard pending judicial review based on its claim that OSHA improperly included non-asbestiform minerals (Ex. 403). This request was denied on July 9, 1986 in a letter from OSHA Assistant Secretary John Pendergrass (Ex. 404). Vanderbilt also filed a stay motion in the United States Court of Appeals for the Second Circuit (Ex. 402). The National Stone Association (NSA) and Vulcan Materials Company, non-participants in the rulemaking, also requested a stay of the standards on July 11, 1986 insofar as they applied to tremolite and actinolite exposure from the use of crushed stone in construction (Ex. 406 & 407). In their request for a stay, the NSA claimed that the technological and economic impacts of the new standard on users of crushed stone in the construction industry was never considered in the rulemaking. It alleged severe adverse impacts on the industry and the public as the result of applying the new standard to crushed stone.

Vanderbilt requested OSHA to reconsider its denial of an administrative stay on July 14, 1986 (Ex. 416). Court papers filed by Vanderbilt brought to OSHA's attention internal memoranda from three NIOSH scientists which disputed OSHA's regulatory treatment of non-asbestiform tremolite, anthophyllite and actinolite. Dr. Donald Millar, the Director of NIOSH, wrote to OSHA on July 17, 1986 to reaffirm NIOSH's support for OSHA's positions in the final standards (Ex. 408). On July 18, 1986, OSHA granted a temporary stay insofar as the standards applied to non-asbestiform tremolite, anthophyllite, and actinolite (51 FR 37002). OSHA said it was granting the stay in part to enable the agency to review Dr. Millar's letter, the NIOSH memoranda, the submissions of Vanderbilt and various trade associations, and to conduct supplemental rulemaking on whether non-asbestiform tremolite, anthophyllite, and actinolite should be regulated in the same manner as asbestos and the feasibility of regulating the affected industries. The stay was extended to July 21, 1988 (52 FR 15722), again to July 21, 1989 (53 FR 27345) and again to November 30, 1990 (54 FR 30704) in order to complete rulemaking.

Pursuant to the stay and its extension, the standard, covering tremolite, anthophyllite, and actinolite were to remain in effect as they had applied to minerals under the previous standard. The 1972 standard was republished as 29 CFR 1910.1101 (1987).

The issues to be decided in this supplemental rulemaking are whether non-asbestiform tremolite, anthophyllite, and actinolite, when present in the occupational environment as fibers (as defined in the standards), should not be regulated in the same manner and to the same extent as asbestos. If the non-asbestiform fibers are found to warrant regulatory treatment, OSHA will consider, in the context of its priorities for regulatory actions, several alternative regulatory approaches as a part of this rulemaking.

IV. Mineralogic Considerations

The controversy over the interpretation of the health effects evidence for non-asbestiform minerals, in major part, stems from confusion over mineralogic definitions and how these definitions have been used to characterize mineral particles, in particular, particles of microscopic and respirable dimensions. The following is a brief discussion of some of the mineralogic nomenclature as it relates to the issues of concern. The purpose of this discussion is to clarify certain mineralogical terms and to address the difficulty in distinguishing between mineral types at the microscopic level.

Asbestos is not a precisely defined chemical compound, but rather, a collective term given to a group of similar, hydroxylated silicate minerals having commercial significance. Asbestos belongs to two mineral families: serpentine and amphibole. Of these mineral families the serpentine mineral, chrysotile, and the amphibole minerals crocidolite, amosite, tremolite asbestos, anthophyllite asbestos, and actinolite asbestos are the primary minerals generally considered to fall under the mineralogical rubric of asbestos. [Note: Amosite, a commercial term referring to Asbestos Mines of South Africa, is mineralogically known as cummingtonite-grunerite asbestos.] Each of the above minerals is found in the asbestiform habit (other minerals may also occur in the asbestiform habit but are not mined commercially as asbestos). The crystal habit of a mineral is the shape or form a crystal or aggregate of crystals takes on during crystallization and is dependent on the existing environmental/geologic conditions at the time of formation. In the asbestiform varieties growth proceeds in one dimension and crystals form naturally as long, flexible, durable fibers. A feature of the asbestos fibers is that they are found in bundles that can be easily separated into smaller fibers or fibrils.

Each of these six minerals also occurs naturally in crystal habits where growth proceeds in two or three dimensions. These varieties are termed non-asbestiform. This variety does not separate into fibrils but during such processes as mining, milling and/or processing, can be broken into fragments resulting from cleavage along the minerals' two or three dimensional plane of growth. Particles, thus formed, are generally referred to as cleavage fragments. These cleavage fragments

may occur in dimensions equal to asbestiform fibers. The non-asbestiform counterparts of chrysotile, crocidolite, and amosite are called antigorite, riebeckite, and cummingtonite-grunerite, respectively. Tremolite, anthophyllite, and actinolite have the same name whether asbestiform or non-asbestiform. The asbestiform and non-asbestiform counterparts of the same mineral are chemically identical and have the same crystalline structure; the difference in form is the manner of crystal growth (i.e. the mineral habit).

As this terminology indicates, the habit in which these minerals are observed in nature, as a result of crystal growth, can be used as a criterion for distinguishing between asbestiform and non-asbestiform minerals. However, at the microscopic level (which is biologically important because it is these fibers that are inhaled in the lungs) differences in gross growth characteristics, on a particle by particle basis at the submicron level, are often not readily observable or may only, if at all, be distinguished with great difficulty. For example cleavage fragments equal in dimension to asbestiform fibers are often not easily distinguished under an ordinary light microscope using phase contrast microscopy (PCM). More complex methods such as polarized light microscopy (PLM) or electron microscopy are required to distinguish asbestiform minerals from non-asbestiform minerals.

Part of the reason for this difficulty is due to the limitations of microscopic methods. However, another reason for this difficulty is that amphibole minerals "form in a continuum of habits from granular through fibrous to the extremely fibrous and thin asbestiform habit," and often "no exact line can be drawn between the non-asbestiform acicular habits and the asbestiform habit." (Ex. 410–20). Furthermore at the microscopic level "acicular cleavage fragments [non-asbestiform by mineralogic definition] are frequently indistinguishable from mineral fibers derived from commercial asbestos fibers" (Ex. 410–22). This continuum includes a range from fine-grained-massive, to blocky, bladed, prismatic or acicular (needlelike) varieties." (Ex. 410–15) and has been described as a "scale towards increased fibrosity." (Ex. 410–21). During rulemaking hearings for the revised 1986 standards, Dr. Ann Wylie stated that the shape of the amphibole cleavage fragment is dependent on the history of the mineral sample (Ex. 230). Thus, because there is a continuum of habit growth towards increasing fibrosity, the cleavage fragments, which result from grinding, milling or processing of these minerals, may also vary in their degree of fibrosity.

The difficulty in distinguishing between mineral particles (i.e. asbestiform fibers and non-asbestiform cleavage fragments) is further complicated by the occurence of particles which do not fit neatly into either category of mineral. For example samples from industrial talc deposits have shown "transitional particles." (Ex. 410–23). These particles when observed microscopically possess characteristics of talc on one end of the particle and anthophyllite on the other end. In this case, the mineral is in an intermediate stage where it has begun to transform from anthophyllite to talc. These particles display certain asbestos-like characteristics such as a bundle of sticks effect, frayed ends and high aspect ratios but are not mineralogically asbestiform fibers. In addition some samples of non-fibrous actinolite have been observed to exhibit secondary asbestiform texture (Ex. 430). In these samples the outward nonfibrous [non-asbestiform] habit of the original mineral is preserved and a fibrous character of the mineral becomes manifest only upon breaking the crystal apart.

These two examples further illustrate that there is not always a clear line of distinction between all asbestiform and non-asbestiform minerals at the microscopic level. The evidence indicates that there is a range of fibrosity among the amphibole minerals and cleavage fragments dimensions may vary and in some cases may approach a fibrosity which is indistinguishable from asbestiform fibers. Thus there is mineralogic terminology which identifies, at a gross level, distinct and different mineral habits. However at the microscopic level, for small discrete particles, such as those collected on air monitoring filters, these distinctions become less clear.

It is important to appreciate this problem especially when critically reviewing the health effects evidence related to non-asbestiform tremolite, anthophyllite and actinolite. Many of the earlier health studies did not characterize mineral particles with the same level of analytical precision that has been used in more recent mineralogic fiber distribution studies (i.e. many studies did not use carefully crafted definitions such as those currently submitted by the commentors from affected industries). For example one term which has caused confusion in approaching this issue is the term "fibrous". It has been used by some to apply to asbestiform fibers only and by others to apply to all particles of the six asbestos minerals, whether asbestiform or non-asbestiform, as long as they meet certain morphological criteria, such as length, diameter, aspect ratio (ratio of length to diameter), and shape. Use of the term fibrous in some health studies has made interpretation of them difficult because it is not always clear which form of the mineral was tested. The National Research Council, in its 1984 report, "Asbestiform Fibers-Nonoccupational Health Risks," says the inaccurate use of mineralogical terms in scientific reports makes it "extremely difficult to draw conclusions about their [asbestiform fibers] physical properties and biological effects." (Ex. 321, p. 8) Thus, for studies which have not strictly applied mineralogic terminology to terms such as fibrous, it may be inappropriate, in retrospect, to apply these strict mineralogic terms when interpreting the findings in these studies.

In a recent review of the information on non-asbestiform minerals, NIOSH points out that because mineral fibers attain their shape primarily through growth rather than cleavage giving them commercially important properties, a large literature has developed to identify these important properties, primarily in bulk samples (Ex. 473). However, NIOSH adds that it has not been established that these commercial properties are relavant to the carcinogenic potential of asbestos fibers. Furthermore, as NIOSH points out, it may be inappropriate to use mineralogic terminology, developed for assessing commercially important aspects of bulk materials, for the characterization of environmental exposures for the determination of health risks. In their opinion it is not clear that the mineralogical definition of fibers is relevant in assessing the health hazard. Similarly the American Thoracic Society (ATS) points out that "often in these critiques [i.e literature reviews of the health effects], the emphasis is primarily on precise mineralogical terminology rather than biological effect. If the mechanism(s) of asbestos induced or promoted carcinogenesis were clearly understood, in both mineralogical and biological terms, then we could easily proceed to distinguish what is truly asbestiform and non-asbestiform for regulatory purposes. However since such clarity of understanding is not apparent, it would seem prudent public health policy to use an inclusive, rather an exclusive, definition of asbestos."(Ex. 472)

In its 1972 and 1986 standards OSHA used the terms fibrous and fiber, in a more general sense, from a public health perspective, to refer to both asbestiform and non-asbestiform particles, which are greater than 5 micrometers in length and have aspect ratios of at least 3 to 1 [a definition which has been supported and used by NIOSH (Exs. 408 &421)], in order to convey the biological importance of the particles of the covered minerals which attain certain dimensions. The American Thoracic Society (ATS) has stated that the primary issue is not so much what is or what is not an asbestos fiber in mineralogical terms. Rather it is what particle dimensions of these durable minerals are carcinogenic and what are not.

However the evidence which is available is insufficient to show that exposure to equivalent concentrations of asbestiform and non-asbestiform minerals results in similar health risks. OSHA believes that the relationship between particle dimension and carcinogenicity should be further examined in this rulemaking proceeding. Other properties which it has been suggested may be significant in producing health effects, such as longitudinal splitting, durability, and surface activity, should also be further examined.

V. Health Effects of Non-Asbestiform Tremolite, Anthophyllite, and Actinolite

As has been stated previously, the partial administrative stay was granted in part in order to enable OSHA to review new submissions which raised questions about the appropriateness of regulating non-asbestiform tremolite, anthophyllite, and actinolite as presenting the same health risk as asbestos. OSHA has broadened its review to cover all available health evidence relating to non-asbestiform tremolite, anthophyllite and actinolite. In addition OSHA has reviewed various reports of the health effects data including those submitted by the National Stone Association (Ex. 423–A), Environmental Health Associates (Ex. 425–A), Dr. Brian Boehlecke (Ex. 442), Dr. Clark Cooper (Ex. 427–A), Dr. John Balmes (Ex. 466) and Dr. William Nicholson (Ex. 474).

Based on its preliminary review, OSHA believes that there are a number of studies which raise serious questions about the potential health hazard from occupational exposures to non-asbestiform tremolite, anthophyllite and actinolite. However, the currently available evidence is not sufficiently adequate for OSHA to conclude that these mineral types pose a health risk similar in magnitude or type to asbestos. The Agency believes, however, that the evidence suggests the existence of a possible carcinogenic hazard and other impairing non-carcinogenic adverse health effects.

The record now contains scientific opinions which cover the spectrum of possible interpretations of the record evidence. OSHA hopes to subject these opinions to public scrutiny, and to assure that all relevant studies have been brought to the Agency's attention at the conclusion of this proceeding.

OSHA emphasizes that the issues discussed above concerning which properties distinguish asbestiform from non-asbestiform minerals in their habits is not central to the debate concerning the health effects of exposure to these minerals. This is because it is not apparent from the available health evidence that the biological significance of both groups of minerals resides in their characteristics in their natural habits. It is the properties of fibers which are airborne, inhaled by workers and whose shapes are influenced by processing and handling which are the most biologically relevant. The relevant public health query therefore must be; what properties of such airborne fibers induce "asbestos-related" disease, and which fibers or particles possess such properties.

Non-asbestiform tremolite, anthophyllite and actinolite minerals share many of the properties possessed by their asbestiform analogues. Both the asbestiform and non-asbestiform minerals possess the same chemical composition and crystal structure and all are amphibole minerals. Non-asbestiform tremolite, anthophyllite and actinolite, being amphiboles, also share the property of durability. Thus they also persist in the lung tissue once respired, and are not readily broken down (metabolized) by biological fluids/enzymes. During mining, milling or processing, non-asbestiform tremolite, anthophyllite and actinolite can break into respirable particles which have the same dimensions as asbestiform fibers associated with the induction of tumors (i.e aspect ratios of 3:1 or greater). Although some of these particles may be more blunt shaped and blocky, other particles may be needlelike or acicular and assume shapes very similar to asbestos fibers. Further there are no data indicating that the cleavage planes of cleavage fragments are any less biologically active than the crystal faces of asbestiform fibers.

OSHA acknowledges that at the macroscopic level, asbestiform and non-asbestiform minerals exhibit gross differences in crystal habit, however, it is unknown whether or not these macroscopic differences carry down to the microscopic or single fiber level. It is at this microscopic level at which biological/cellular activity probably occur.

Non-asbestiform cleavage fragments and asbestiform fibers of the same mineral differ in that cleavage fragments do not possess the ability to split further into fibrils like their asbestiform analogues. From the limited amount of information available it also appears that although cleavage fragments may achieve dimensions similar to asbestiform fibers, for the most part they tend to break into lower aspect ratio particles.

The following provides a brief review of the scientific and medical literature relevant to the health effects issues on non-asbestiform tremolite, anthophyllite, and actinolite.

First, empirical evidence that asbestiform tremolite, anthophyllite, and actinolite can cause mesotheliomas and lung cancer is not disputed. Yazicioglu *et al* (Ex. 84–211) found a high prevalence of pleural calcification and mortality from mesotheliomas and lung cancer among residents in a village in Turkey exposed to "fibrous tremolite" in construction materials. In a proportional mortality study of talc workers in New York State, Kleinfeld *et al.* (Exs. 84–141, 84–402) reported in 1967 and again in 1974 a fourfold excess mortality from lung and pleural carcinoma. These workers were reportedly exposed to talc containing "tremolite and anthophyllite asbestos." Meurmann *et al* (Ex. 84–410) and Kiviluoto *et al* (Ex. 410–5) reported excess respiratory cancer among anthophyllite miners in Finland, while Nurminen *et al* (Ex. 410–7) found similar results in factory workers using anthophyllite asbestos.

In a more recent epidemiological study McDonald *et al* (Ex. 410–6) reported an excess in respiratory cancer including mesotheliomas, among vermiculite miners in Libby, Montana. Vermiculite, a mica-like mineral ore, was contaminated with four to six percent tremolite-actinolite fibers. Mineralogic analysis of the Libby mine's ore showed the fibers to be mostly an asbestiform type of fiber. However, there were also "massive amphibole crystals, which when pulverized, produced cleavage fragments resembling fibers." (p. 439) Thus in this case there appears to be a mixture of both asbestiform and non-asbestiform minerals. Although the fiber analyses indicate that some of the particles were non-asbestiform in origin, the

predominant fiber exposure appears to be from asbestiform tremolite. Cumulative fiber exposure estimates were made for each member of the cohort using the standard optical microscope technique, so that particles, including cleavage fragments were counted as long as they met size and aspect ratio criteria.

Standardized Mortality Ratios (SMRs) were computed for the cohort of 406 men. When compared to death rates of men in the U.S., there was a substantial excess number of deaths from respiratory cancer (SMR=245). Four of the 43 cancer deaths were from mesothelioma. There was also a substantial excess number of deaths from non-malignant respiratory disease (SMR=255). There was no excess number of deaths from cancers of non-respiratory sites. When compared to death rates of Montana men, the cohort's excess mortality was even greater; for example, the SMR for respiratory cancer rose from 245 to 303. The authors also compared the SMRs for respiratory cancer to the SMRs found in New York State talc mines by Kleinfeld *et al* (Ex. 84–402) and Brown *et al* (NIOSH) (Ex. 84–25). They found them to be essentially the same. The SMRs for lung cancer in the Kleinfeld *et al* study was 280 and 270 in the study by Brown *et al*. Similar SMRs have been observed by NIOSH who has also studied this same cohort of vermiculite miners (Ex. 410–28). Using a larger cohort (575 men) and the U.S. white male population as a comparison population, an SMR for lung cancer of 223 was calculated. Thus the results of these studies provide additional evidence on the high potency of asbestiform tremolite. Although non-asbestiform tremolite was present it is not possible, from the data presented, to discern what contributing effect the non-asbestiform minerals may have had.

Although the positive evidence is fairly conclusive that asbestiform tremolite and anthophyllite induces cancer and nonmalignant respiratory disease, the mechanisms by which these and other asbestiform minerals induce adverse health effects is not completely understood. It is important to try to assess what properties are responsible for the induction of disease, because then it would be possible to assess the toxic potential of other durable minerals which possess the biologically relevant properties. The record developed in this proceeding demonstrates that asbestos-induced carcinogenesis is a complex process that is affected by a number of factors. The National Research Council (NRC) in its discussions on the health effects of asbestiform fibers stated that "various physical properties of asbestiform fibers appear to play a role in causing adverse health effects; however the specific properties that are necessary and sufficient to produce such effects have not been positively identified" (Ex. 321). The characteristics which appeared to the NRC to be biologically relevant were respirability, size, aspect ratio, durability, chemical composition, surface area and surface charge.

Several studies in the record suggest that fiber dimension is an important factor in asbestos-related disease development. Stanton *et al* (Ex. 84–195) studied the effects of various sizes of different durable minerals implanted in the pleura of rats and found that the most carcinogenic particles were 0.25 μm or less in diameter and greater than 8 μm in length (aspect ratio=30:1). In addition fibers that were 1.5 μm or less in diameter and longer than 4 μm in length (aspect ratio=3:1) also showed a high correlation with carcinogenicity. In a re-analysis of Stanton's data, Bonneau *et al* (Ex. 410–11) found a positive correlation between average aspect ratio and carcinogenicity. For tremolite asbestos, an average aspect ratio of four corresponded to a 50% probability of tumor induction. These results are supported by the findings from a case study of a mesothelioma death (Ex. 410–10). In this study an analysis of the fiber burden in the autopsied lungs showed elevated levels of tremolite. The mean aspect ratio of fibers found in the lungs was 7:1. Thus low aspect ratio tremolite appears to have contributed to the induction of mesothelioma.

Stanton also studied the correlation of fiber dimension and tumor induction for other durable non-asbestos minerals (Ex. 84–93). From this study, using different fibrous glasses, Stanton concluded that "our experiments reinforce the idea that the carcinogenicity of fibers depends on dimension and durability rather than physiochemical properties and emphasize that all respirable fibers should be viewed with caution". These hypotheses were generally supported by Harrington (Ex. 84–131); Pott (Ex. 84–173); Wagner (Ex. 84–198); Wright and Kuschner (Ex. 84–210); and Bertrand and Pezerat (Ex. 84–114). In particular Bertrand and Pezerat analyzed Stanton's data and found a high correlation between aspect ratio and tumor probability for durable minerals. In their analysis tumor probability began to rise at aspect ratios of about 3 to 5. These analyses and the other animal experiments depict a consistent pattern that largely confirm Stanton's conclusion that the features of most importance in fiber carcinogenicity are the length and width of the fiber. Thus these studies suggest that durable materials that possess carcinogenic dimensions can produce carcinogenic responses. Similarly, based on his work in the field of asbestos as well as the work of other leading researchers, J. Christopher Wagner concluded that "all mineral fibers of a specific diameter and length size range may be associated with development of diffuse pleural and peritoneal mesotheliomas" (Ex. 410–8). The National Resource Council points out that there is an "increased risk of mesothelioma after [the induction of] long, thin fibers in comparison to short, thick fibers". However, they add that "there does not appear to be a critical length below which fibers have no carcinogenic potential" (Ex. 321, 37).

Studies in the record also suggest that the durability and persistence of fibers are important determinants in disease development. Pathology studies of human lung tissue from workers who had died of pleural mesotheliomas and lung cancer have shown that amphibole minerals such as tremolite and anthophyllite fibers are more persistent when compared to chrysotile fibers, even when the concentration of respired chrysotile was considerably higher (Rowlands *et al*, Ex. 84–178; McDonald *et al*, Ex. 84–175; Glyseth, Ex. 312). The American Thoracic Society (ATS) reviewed these lung burden studies of chrysotile miners with asbestosis and also noted that tremolite is the predominant fiber found in the lungs of chrysotile miners. (Ex. 472) They also point out that in these miners there was a high correlation between interstitial fibrosis and tremolite concentration. Based on these results Wagner has also stated that "it is the fiber retained in the lung tissue that is responsible for the disease" and "the evidence points to exposure to the amphiboles as being more hazardous than exposure to uncontaminated chrysotile fibers." (Ex. 410–8) Thus it appears that fibers which are more durable, persist in the tissue longer. This in turn may increase the period of cellular contact which may induce alterations which lead to the disease process.

However it should be noted that in the lung burden studies the miners were also exposed to high concentrations of chrysotile. Because chrysotile disappears more rapidly from the lung, the exposures to chrysotile may not be well reflected in lung burden analyses. Taking this into consideration, it is difficult to determine the role of chrysotile versus tremolite in these

miners' diseases. As in other studies, the fact that there are a mixture of minerals types precludes one from ascribing causation to one particular mineral type.

Other factors such as the surface chemistry of fibers and cell-to-cell communication may also influence their carcinogenicity (See 51 FR 22629). For example surface charge may cause hemolysis or cell lysis, or the fiber may carry materials which may be carcinogenic even if the host crystal is not. Although not well supported at this time, there is also some suggestion that carcinogenicity of asbestos fibers is affected by the electrical charge of chemical groups on the surface of the fibers, creating biochemically active sites (Flowers, Ex. 84–333; Dunnigan, Ex. 91–15, Att. 2). Flowers found increased toxicity in *in vitro* tests for chemically treated asbestos fibers. However mechanisms of fiber cell interactions and their role in disease causation are not clearly understood. Even so there is little evidence to indicate that these factors are different for asbestiform fibers and non-asbestiform cleavage fragments of chemically identical mineral types at the microscopic level.

Studies by Cook *et al* (Exs. 430–B & 410–30) suggest that another important factor in tumor induction is the ability of the minerals to undergo longitudinal splitting *in vivo*. In these studies rats were injected with amosite and ferroactinolite fibers. The ferroactinolite sample was observed to undergo a higher degree of *in vivo* longitudinal splitting, resulting in a higher concentration of retained fibers. In those rats with higher retained fiber concentrations there was also a higher carcinogenic response. From these results the authors hypothesize that minerals which do not undergo splitting reactions are less likely to be human carcinogens. However while longitudinal splitting may be an important factor in carcinogenesis, it should be kept in mind that this may be an issue of carcinogenic potency rather than carcinogenic potential. That is, the longitudinal splitting of fibers into into smaller fibrils may increase the effective dose of the mineral particles respired into the lung. However these reactions may merely increase the potency of fibers which even without longitudinal splitting possess the potential to induce carcinogenesis.

Based on the mechanistic information discussed above as well as the empirical evidence on asbestiform tremolite and anthophyllite it is possible that non-asbestiform tremolite, anthophyllite and actinolite have carcinogenic potential similar to their asbestiform analogues. A number of commentors to the record have supported such a conclusion. For example, Dr. John Balmes in his analysis of the animal data points out that "there are no animal studies which have determined the dividing point between 'safe' and 'hazardous' for both fiber lengths and diameters. Given the carcinogenic activity of tremolite and until animal studies are performed demonstrating that tremolite fibers of specific dimensions are non-carcinogenic, these fibers should be treated as being hazardous." (Ex. 466) In his analysis of lung burden studies in which miners were exposed to chrysotile and tremolite, the American Thoracic Society (ATS) noted that some of the tremolite had the form of cleavage fragments of irregular diameter, rather than true asbestiform fibers. Based on this information they conclude that cleavage fragments have the potential to produce asbestos-like diseases (Ex. 472). The ATS also states in their draft report that "there do not appear to be any data in the literature which specifically informs in regard to biological effect differences of tremolite cleavage fragments compared to asbestiform tremolite, but it is worth noting that tremolite does appear to be carcinogenic in animals when it is applied as a relatively short and broad fiber". The ATS adds that high aspect ratio tremolite has a high propensity to induce mesothelioma, but that lower aspect cleavage fragments are also capable of producing disease.

However, in contrast, literature reviews of the available animal and human health effects evidence, submitted by the National Stone Association (Exs. 432–A, 425–A, 427–A, 467, 469–A and–B, and 470), the American Mining Congress (Exs. 442, 467), the R.T. Vanderbilt Company (Exs. 460–A), and the U.S. Bureau of Mines (Ex. 471), conclude that the empirical evidence does not provide sufficient proof that non-asbestiform cleavage fragments of tremolite, anthophyllite or actinolite present a health risk similar in magnitude and type to their asbestiform analogues. Based on their review of the evidence they believe that the differences in mineral habit give rise to distinctly different airborne particles. They believe that the differences in health effects are a result of the differences in mineral habits and it is only the asbestiform habit which gives rise to fibers which can induce cancer.

These views have been supported by a number of trade associations (Exs. 424, 448, 456, 461, and 462). Similarly the Building Construction Trades Department (BCTD) of the AFL–CIO has also issued a joint letter, with the National Stone Association, in which it concludes that "non-asbestiform actinolite, tremolite and anthophyllite should not be regulated in the same manner as asbestos since there is no medical evidence that they have the same harmful effects as asbestos." (Ex. 444) As no analysis or review of the data accompanied the letter, is not apparent to OSHA on what evidence the BCTD based its conclusion.

The Consumer Product Safety Commission (CPSC) has denied a petition to ban consumer products containing more than 0.01 percent tremolite (Exs. 447, 460–C). In its denial of the petition, the CPSC concluded that (1) the products in question contain non-asbestiform tremolite and (2) neither animal nor human epidemiological studies establish that the non-asbestiform cleavage fragments of tremolite pose a cancer risk to humans. The CPSC's Chairman also expressed concerns over the hazards associated with potential substitutes for products such as playsand. (Ex. 447). OSHA believes that CPSC's conclusion that there is no evidence of a carcinogenic hazard did not give adequate consideration to the relevant evidence and is overstated. It appears that CPSC first distinguished asbestiform fibers and non-asbestiform cleavage fragments based primarily on strict mineralogic definitions. It then reviewed the scientific evidence which met this definition for a non-asbestiform cleavage fragment. Finding no data for these mineral types (in part because such studies have not been conducted) it concluded that there was no evidence. The CPSC did cite a draft interim report from Dr. J.M.G. Davis and reported that the preliminary results from Davis' rat injection study did not indicate any association between non-asbestiform tremolite and tumor induction based on the fact that "non-fiber" samples had not produced tumors. OSHA notes that the ATS has also reviewed this preliminary data and noted that the analysis and sizing of the samples had not been completed, adding that "a sample of tremolite which had fibers with aspect ratios greater than 3:1, but which did not appear to be asbestiform, produced mesotheliomas in approximately 20 percent of the animals after long exposure." (Ex. 472). As these studies have not been completed and no exposure characterizations have been presented, OSHA does not believe that these preliminary results lend much to the understanding of this issue. CPSC also failed to consider the mechanistic

studies of durable particles discussed above.

Although OSHA believes that cleavage fragments possess properties which may be associated with toxic potential, OSHA also acknowledges that the empirical studies in humans and animals are not sufficiently supportive of the mechanistic information to conclude that the risks are similar in magnitude and type for both asbestiform and non-asbestiform minerals. There are a limited number of epidemiologic and animal toxicology studies in the record concerning non-asbestiform tremolite, anthophyllite, and actinolite. NIOSH studies of upstate New York talc miners and millers exposed to predominantly non-asbestiform tremolite and anthophyllite showed an excess risk of mortality from lung cancer and nonmalignant respiratory disease (Ex. 84–025) and also a high prevalence of pleural thickening and calcification, decreased pulmonary function and lung fibrosis (Ex. 84–181). (See 48 FR 5117–51120 and 51 FR 22630–22631 for an extensive review.) In the mortality study (Ex. 84–25) the cause-specific mortality rates of a cohort of 398 talc workers were compared to U.S. white males. In their analysis NIOSH found a statistically significant elevated increase in lung cancer (9 observed vs. 3.3 expected, SMR=270) and in nonmalignant respiratory disease (8 observed vs. 2.9 expected, SMR=277). An analysis of lung cancer and latency showed an increasing risk of lung cancer with increasing latency. Although the smoking histories of the cohort were unknown, it was estimated that in a heavy smoking population, smoking would increase lung cancer mortality by no more than 49% and thus would not explain the excess risk observed in this study. Several members of the cohort who had died from lung cancer and nonmalignant respiratory disease had worked at other upstate New York talc mines. However, an analysis of mines in the neighboring areas (Ex. 84–39) were shown to have similar mineralogic makeup with similar fiber characteristics and thus may have had similar exposures. In the morbidity study at this facility (Ex. 84–181), talc miners with no previous work history at other talc mines had a significantly elevated pleural thickening and calcification. Talc workers also had significantly decreased pulmonary lung function.

Conflicting results were reported by Stille and Tabbershaw (Ex. 84–196) who studied the same facility studied by NIOSH. Using a larger cohort, Stille and Tabbershaw concluded that the lung cancer excess was not statistically significant and was consistent with a smoking effect. They also conducted a separate analysis in which they divided the cohort into subcohorts, one with prior work experience and the other without prior work experience. Elevated mortality from lung cancer and nonmalignant respiratory disease were found among the cohort with prior work experience whereas no elevated causes of death were found among the cohort with no prior work experience. They concluded that exposures at this facility are unlikely to have caused the observed disease.

NIOSH (Exs. 84–217, 84–218, and 84–231) identified several problems in the Stille and Tabbershaw analyses that may have accounted for their conflicting results. First, NIOSH noted that workers were allowed to enter the cohort as late as one year prior to the end of the cut-off date for vital status determination. Because there was no analysis by latency interval, workers who entered the study late would have had shorter latency periods and could have diluted the risk of those workers with longer latency periods and thus masked an excess risk of mortality. Secondly, NIOSH noted that subdividing the cohort between those workers with prior work experience and those workers without prior work experience resulted in subcohorts of small size prone to selection biases. In particular, the subcohort of workers with prior work experience would have a longer follow-up period and thus a longer latency period. Whereas the subcohort of workers without prior work experience may have insufficient latency to determine their true occupational risk. In addition the subcohort of workers without prior work experience may have more recent hires which could lead to an exaggeration of the healthy worker effect. Thirdly, NIOSH noted that the analysis did not address the prevalence of pleural thickening observed in workers without prior work experience nor did the analysis address the death from mesothelioma. Tabbershaw and Thompson responded to NIOSH's critique (Ex. 84–218) stating that the company had a policy of hiring only experienced workers and thus selection biases resulting in healthy worker effects would have been unlikely. They also reiterated their earlier findings and emphasized that lung cancer deaths occurred in workers employed less than one year at the study facility thus making it doubtful, in their opinion, that exposure to talc at that facility was the likely cause of lung cancer mortality.

Because of the controversy regarding the epidemiologic analyses, Lamm and Starr (Exs. 84–257 & 410–24) reanalyzed the cohort studied by Stille and Tabbershaw in an effort to determine whether or not the exposures to dusts at the study facility induced lung cancer in its workers. In this study the two subcohorts were defined as (1) those workers with less than one year's employment at the study facility and (2) those workers with more than one year's employment at the study facility. Their analysis found an increased risk of lung cancer, however they found that risk decreased with increased duration of employment at the study facility rather than increased. Lamm and Starr also noted that there was a higher exposure among millers than miners but, there were higher risks among miners, thus indicating a inverse dose-response relationship. A further analysis of these workers' prior work histories suggested to the authors that the higher risk for short term employees might be explained by their previous exposures. Excess nonmalignant respiratory disease was also found among the short term employees; however, the authors stated that such nonmalignant disease is found in other talc plants regardless of the minerology and morphology of their dusts. Like Stille and Tabbershaw, Lamm and Starr concluded that exposure to the talc at the study facility was not likely to have been the cause of the observed lung cancer. NIOSH's comments on this analysis (Ex. 84–375) were similar to their criticism of the Stille and Tabbershaw study, noting a deficiency in cohort size and latency analysis.

Reports submitted to OSHA by Dr. John Balmes (Ex. 466) and Dr. William Nicholson (Ex. 474) have similar criticisms of the Stille *et al* and Lamm *et al* analyses. In particular Dr. Balmes concurs with the NIOSH criticism that a stratification of the cohort by Stille and Tabbershaw into a subcohort of workers without previous employment would include many new hires and thus exaggerate the healthy worker effect. He states that such an exaggeration is reflected in the all-cause SMR of only 0.5 among the subcohort without previous employment. Furthermore he adds that Lamm and Starr's analysis confirms that a number of young men were hired between 1970 and 1974 due to the acquisition of another company's workers in 1974. Dr. Nicholson also echos many of the NIOSH criticisms of Stille and Tabbershaw analyses (Ex. 474). Specifically he notes that the smoking history for the U.S. population in the study period was not very

different from the cohort's reported smoking history and thus the increased lung cancer risk cannot be attributed to smoking.

In their analysis Stille and Tabbershaw also argued that the average latency among the cases was less than that generally observed for lung cancer (i.e. 35 years). However Dr. Nicholson argues that asbestos acts as promotor, multiplying the underlying risk, such that the time course of lung cancer is largely determined by the time course of the underlying risk (Ex. 474). For example, he states "if an exposure to a carcinogen begins at age 20, the latency is about 40 years; if exposure begins at age 40, the latency is about 20 years, but it can be as short as 10 years. Thus the time from onset of fiber exposure is much less relevant for lung cancer."

Nicholson also disagrees with Lamm and Starr's conclusions that the excess risk was due to prior exposures from previous employment in high lung cancer risk industries. He states that such a conclusion is unwarranted for several reasons: (1) Actual work activities and potential exposures from the previous employment of the cases examined is unknown, (2) if one removes cases from consideration because of employment elsewhere, one should also remove those with similar employment from the comparison group, in this case the U.S. general population, clearly an impossible activity, and (3) identifying potential confounding exposures after the completion of a study is highly subject to bias. Nicholson concludes that the exposure-response relationship observed in the talc study are compatible with those that have been observed among groups exposed to various asbestiform fibers. He notes, however, that because of the confounding exposures to different mineral types one cannot attribute the full effect to cleavage fragments.

NIOSH supported their initial findings and conclusions concerning the talc miners and millers in the rulemaking hearings for the revised asbestos standards. However, after the final standards were issued three NIOSH scientists wrote internal memoranda (Exs. 402–M, N, & O) which disagreed with NIOSH's official position that the evidence supported the regulation of non-asbestiform tremolite, anthophyllite and actinolite. In particular Dr. John Gamble wrote a lengthy analysis of the NIOSH study in which he criticized the study for its lack of an exposure-effect relationship (Ex. 402–0). He also attempted to attribute the excess lung cancer risk to smoking. In his report he concluded that OSHA had erred in its interpretation of the NIOSH study by Brown *et al* (Ex. 82–25).

Because of this internal controversy, NIOSH convened an independent review panel to evaluate the data and various reports related to the talc mine and mill including an unpublished report by Gamble supplementing this previous memo (Ex. 473). The NIOSH panel criticized Gamble's report for placing too much emphasis on the lack of an exposure-effect relationship. They stated that there were too many questions about the reliability of the exposure estimates due to the variability of exposure intensity over time. In their opinion this would obscure any exposure-effect relationship. The panel also criticized Gamble's smoking analysis, stating that smoking patterns among the workers did not differ significantly from expected patterns among the comparison population for the study period and thus the excess lung cancer risk observed in the study group was not likely to be accounted for by smoking. It is also interesting to note that for this cohort of talc miners and millers, the NIOSH panel reported that the elevated risks initially observed by Brown *et al* have persisted. In particular they state that the lung cancers have increased by 40% and the nonmalignant respiratory disease has increased by 70%. The NIOSH panel concluded however that presently it is not possible to obtain an unambiguous answer to the question of whether or not the exposures to non-asbestiform tremolite at the study facility are responsible for the excess risk observed among this cohort.

The findings of this independent review panel are consistent with earlier letters to OSHA from Dr. J. Donald Millar, NIOSH's director, which reiterated the NIOSH position presented during the hearings for the revised asbestos standards (Exs. 408, 421 and 439). OSHA continues to find persuasive the rationale of the original NIOSH researchers who defended their conclusions. In addition OSHA believes that the NIOSH studies provide evidence to support the possibility that exposure to minerals at the mine is correlated to the excess mortality from lung cancer and nonmalignant respiratory disease and an excess of pleural thickening and lung decrements.

However, OSHA also believes that these studies are not necessarily able to establish the carcinogenicity of non-asbestiform cleavage fragments of tremolite, anthophyllite and actinolite. For example, it was not always clear whether the mineral studied was primarily non-asbestiform. The company asserts that the tremolite in its talc deposits is non-asbestiform (see Ex. 337). Other studies (Dement and Zumwalde, Ex. 84–39; Kleinfield, 84–39; Klienfield, 84–140) suggest tremolite in the talc deposits is of the asbestiform variety. However, it should be noted that Dement and Zumwalde also reported that talc samples from the facility contained 37–59% tremolite of both fibrous and non-fibrous habits. In addition they stated that "most of the tremolite was of the non-fibrous habit".

In addition the epidemiologic studies involve exposures to multiple substances, so causation can not easily be ascribed to any one of them. Tremolite, anthophyllite, and actinolite are usually found as constituents or contaminants of various ores, for example, fibrous talc and chrysotile, which themselves contain fibers believed to cause cancer and respiratory disease [e.g., Selevan, Dement, and Wagoner (talc), Ex. 84–191; Doll and Peto (chrysotile), p. 17]. Also Dr. Arthur Langer observed that tremolite fibers in New York State talc deposits have been associated with excess malignancies, but since different mines in the same district have a variety of mineral fibers that range from asbestiform to non-asbestiform, "it is difficult to resolve whether the effects are the result of exposure in one circumstance to asbestos or to another mineral fiber or to cleavage fragments in another circumstance. "(Ex. 84–399, p.7) Langer concluded that "it is unknown what role non-asbestiform fibers and cleavage fragments played in the etiology of [disease among talc workers]. (Ex. 84–399, p.10).

In summary, the NIOSH study of the Vanderbilt miners exposed to tremolitic talc type minerals have demonstrated asbestos related diseases. OSHA believes that exposures received at the mine are most likely to have caused these observed diseases. However due to uncertainties in the mineral content and mixed mineral contents, the study does not show that it is more likely than not that non-asbestiform fibers are the cause of the disease.

Thomas and Stewart conducted mortality studies in which they found excess deaths among pottery workers exposed to silica and "nonfibrous (nonasbestiform) talc" (Ex. 410–9). The authors note that in the past tremolitic talc was used in the casting operations of the plant. However this practice was discontinued for the use of non-asbestiform talc. However, the authors do not provide a mineralogical characterization of the talc such that it

is difficult to ascertain what type of mineral was being used in the processes studied. The results of the studies showed that workers exposed to silica and nonfibrous talc had SMRs of 254 compared to SMRs of 137 for those workers with high silica exposure but no talc exposures. The authors concluded that "although the role of silica cannot be ruled out, these data suggest that nonfibrous talc exposure is associated with excess lung cancer risk." However, due to the lack of accurate mineralogic and exposure characterizations, as well as confounding exposures to silica, this study does not inform as to the carcinogenicity of non-asbestiform minerals.

Although OSHA is unaware of other studies relating to non-asbestiform tremolite, anthophyllite and actinolite, reports of human populations exposed to other non-asbestiform minerals have been submitted to the record. In a report prepared for the National Stone Association, Dr. Clark Cooper reviewed studies of four different mining areas reported to have only non-asbestiform minerals other than non-asbestiform tremolite, anthophyllite or actinolite (Ex. 427). The four areas included evidence from prospective cohort studies in the Taconite mining areas in Minnesota and Homestake gold mines in South Dakota, clinical studies and cancer registry observations in iron mining regions in Norway, and radiographic studies in iron mining regions of Labrador. According to Dr. Cooper these studies have reported no evidence of any asbestos-like diseases.

Cooper reported that in the prospective cohort study of taconite miners in Minnesota, no increased cancer risk was observed among workers exposed to cummingtonite-grunerite (the non-asbestiform analogue of amosite). However, the authors of the study stated that relatively few exposure measurements of fibers were made, and of the measurements which were made, the exposures tended to be low as were exposures to total dust and silica (Ex. 410–18). The authors also noted that the average time from hire to the end of observation was 14.6 years and in no case exceeded 24.6 years. In this case low exposure and short latency might explain the lack of an observed asbestos-like effect. Thus this study does not lend adequate evidence as to the presence or absence of toxic potential resulting from exposures to non-asbestiform minerals.

Another population of miners exposed to cummingtonite-grunerite who worked at the Homestake gold mine in South Dakota was found, by NIOSH, to have an increased risk of respiratory cancer and nonmalignant respiratory disease (Ex. 84–45). Analysis of the fibers indicated the median length to be 1.1 micrometers and the diameter to be 0.13 micrometers (an aspect ratio of 8:1). Initially NIOSH attributed this excess mortality to the exposure to cummingtonite-grunerite. However, Cooper points out that subsequent analyses by McDonald *et al.* (Ex. 84–157) and NIOSH (Ex. 84–26) of these same miners attributed the excess mortality to silicosis. In his review of the Homestake mine studies Dr. Nicholson concurs with McDonald and NIOSH that there was substantial silica exposure (Ex. 474). Nicholson states that since silica may be a contributor to the lung cancer risk, the study cannot be used to attribute lung cancer solely to the exposure to cleavage fragments. However, he adds that due to the low power of the studies, they do not demonstrate the absence of a fiber-associated risk. In fact Nicholson's calculations show that when using average fiber exposures and South Dakota lung cancer rates instead of U.S. rates for the comparison population, the exposure-effect relationship is compatible with those of asbestos.

Cooper also reports that clinical and radiographic studies and cancer registry observations of residents in the iron mining regions of Norway and Labrador have not reported any elevations in asbestos-like diseases. However, in these reports there were no epidemiologic analyses nor any measurements of airborne exposure levels such that an absence of effect could be equally attributed to low airborne exposures or insufficient analysis.

In addition to the epidemiological studies, there have been limited studies on the carcinogenicity of tremolite in experimental animals. Smith *et al.* (Ex. 84–196) injected four different talc samples intrapleurally into hamsters. The samples included fibrous tremolitic talc from New York State, tremolitic talc from the facility studied by NIOSH, tremolitic talc from the Western U.S. and asbestiform tremolite. Only the western talc and the asbestiform tremolite induced tumors in hamsters. The authors stated that the negative responses observed with the fibrous New York State talc could be explained by the lesser content of tremolite which was 50 percent. However, they added that this would not explain the negative results in the sample of talc from the NIOSH studied facility which was 90% tremolite. For the western U.S. talc sample in which a positive response was observed, the authors stated that in the sample "elongated particles appear to be fibrous-shaped with parallel sides, but others are rather roughly shaped acicular fragments." This mineral characterization would appear to suggest that the sample is partially non-asbestiform. Originally OSHA classified this sample as non-asbestiform tremolite (51 FR 22679). However, after publication of the final asbestos standards the author of the study, Dr. Smith, informed OSHA that the Agency had misclassified this sample as non-asbestiform (Ex. 417). Dr. Smith stated that, using photomicrographs supplied by him, Dr. Ann Wylie concluded that the sample should not be considered non-fibrous but should be properly characterized as fibrous. In addition she also stated that the sample is not true asbestos but a "stiff variety of amphibole".

Nevertheless, the Smith study has several deficiencies. First, a small number of animals were used and so the study is only able to detect cancer if the substance is very potent. Second, the sample contained a mix of fiber sizes for which there was no systematic characterization of fiber size and aspect ratio. Thus it is difficult to determine which fiber/fiber types produced the tumors. More importantly many hamsters died before the experiment ended, from unspecified causes, thus removing them from risk. Due to these methodological limitations and uncertainties in fiber classification, this study does not provide adequate information that can be used to prove or disprove any causal relationship between non-asbestiform cleavage fragments and asbestos related diseases.

In fiber studies with durable mineral fibers, Stanton (Ex. 84–195) also tested seven samples of talc, two of which did not induce tumors. Reviewing the notes that Stanton used to prepare his reports, Dr. Ann Wylie (Ex. 337, Att. 2) stated that these two negative samples of talc were tremolitic talc products which "usually contain 30–50%" non-asbestiform tremolite by weight". However NIOSH states that "this does not necessarily indicate that the fiber-shaped particle in the talc may not be carcinogenic; it may indicate only that the concentration of fibers per unit of mass used in the test materials was too low to provoke a response (Ex. 473). The importance of concentration was also noted by Stanton, who observed that for other durable particles, increasing concentrations of fibers/microgram showed clearly increasing carcinogenicity (Ex. 84–191). In any case,

Stanton did not characterize the talc sample and OSHA finds Dr. Wylie's analysis, based upon review of notes of the late Dr. Stanton, who cannot comment, to be too speculative to conclude that these non-asbestiform minerals have no carcinogenic potential.

OSHA believes that the animal studies do not definitively prove the carcinogenicity of non-asbestiform tremolite, anthophyllite and actinolite. However, due to the deficiencies in the studies, OSHA does not believe that the results of these studies can be interpreted as being negative. A major difficulty in interpreting the results is due to the lack of clarity in the mineralogic analyses of the samples tested. For example one positive sample was initially classified as acicular indicating a non-asbestiform origin. However the same sample was subsequently identified as fibrous yet not true asbestos. Some negative samples of talc were identified as non-asbestiform tremolite subsequent to the reporting of the study findings. However, information in the report did not characterize the talc samples. Furthermore arguments were made that a low concentration of fibers per unit mass might result in negative findings. Given the deficiencies in these animal studies it is difficult to discern what role non-asbestiform fragments, alone, may or may not have played in the induction of tumors.

Conclusion

After a review of all the available evidence, OSHA believes that there is insufficient evidence to conclude that non-asbestiform tremolite, anthophyllite, and actinolite cleavage fragments present a health risk similar in magnitude or type to fibers of their asbestiform counterparts. However, the positive evidence of carcinogenicity of their asbestiform counterparts and other durable non-asbestos minerals, in conjunction with evidence that the carcinogenic process is associated with fiber characteristics (i.e., size, shape and durability) possessed by non-asbestiform tremolite, anthophyllite, and actinolite particles, do raise questions as to the toxic potential of cleavage fragments of non-asbestiform minerals. However, well designed studies to answer the carcinogenic issue have not been performed. Much of the empirical evidence which is available is clouded by uncertainty due to difficiencies in exposure and mineralogical characterizations. In addition, in these studies the mixtures of minerals typically present where cleavage fragments occur, obscure the ability to pinpoint any one component of the mixture. Thus OSHA believes at this time that there are no studies which provide sufficient evidence to support the regulation of cleavage fragments as causing asbestos related diseases to the same extent as asbestos.

OSHA notes that the Agency is not required to support its findings with scientific certainty [see *I.U.D.* v. *A.P.I.*, 448 U.S. at 655]. The Supreme Court has stated that a "reviewing court [is] to give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge [and that] * * * the Agency is free to use conservative assumptions in interpreting the data with respect to carcinogens, risking on the side of overprotection rather than under protection" (448 U.S. at 655, 656). In this case, OSHA is at the fringe of scientific knowledge. Scientific certainty is most difficult, if not impossible, to obtain, due to the lack of understanding about the mechanisms and biologically relevant properties associated with asbestos related diseases as well as the methodological limitations of the available health evidence.

OSHA believes that the health evidence is unclear as to the carcinogenicity of non-asbestiform cleavage fragments of tremolite, anthophyllite and actinolite. For these reasons OSHA believes that it may be inappropriate to include these minerals under the scope of the revised standards for asbestos for which a significant risk to workers has been clearly established. It may be more appropriate to address these non-asbestiform minerals with a different regulatory approach or to regulate the substances as "particulates not otherwise regulated" under Table Z-1-A of the Air Contaminant Standard (29 CFR 1910.1001 (1989)). Thus OSHA proposes not to include non-asbestiform tremolite, anthophyllite and actinolite under the revised standards for asbestos. However, OSHA will consider including these minerals under the revised asbestos standards if information and/or analysis is presented during this supplemental rulemaking which indicates that asbestiform and non-asbestiform minerals have similar risks. OSHA requests comment on this discussion of health effects and on its preliminary determination.

VI. Regulatory Options

The purpose of this supplemental rulemaking is to determine whether or not non-asbestiform tremolite, anthophyllite and actinolite should continue to be regulated in the same standards and to the same extent as asbestos, or whether they should be treated in some other manner. As stated earlier OSHA has made a preliminary determination that the health effects evidence is insufficient to determine that non-asbestiform tremolite, anthophyllite and actinolite present a health risk similar in magnitude to their asbestiform analogues. For these reasons OSHA is proposing not to regulate these minerals in the same standards and in the same way as asbestos.

However, the scientific issues concerning these minerals have been a strong source of controversy and OSHA has invited comment on its analysis of the health effects evidence. Should the weight of the evidence collected in these rulemaking proceedings indicate that non-asbestiform tremolite, anthophyllite or actinolite present asbestos-like risks, OSHA believes that a final determinination to include these minerals under the scope of the revised asbestos standards would be an appropriate option.

Therefore a regulatory option still under consideration by OSHA during this supplemental rulemaking is to regulate non-asbestiform tremolite, anthophyllite and actinolite under the revised asbestos standards. Under this approach OSHA could exempt users of crushed stone or aggregate rock which may be contaminated with non-asbestiform tremolite, anthophyllite or actinolite, from the initial monitoring and labeling requirements of the revised standards. OSHA believes that employee health protection will be optimized by exempting such operations from these provisions. OSHA's reasons are as follows: The available evidence indicates that in most operations involving crushed stone or aggregate rock, only trace or small amounts of non-asbestiform minerals are found in the ore as contaminants (Ex. 465). These situations are very different from situations such as the use of tremolitic talcs in manufacturing. In these cases the non-asbestiform tremolite is a desired component of the talc because it enhances the performance of the product in certain manufacturing processes. The tremolite and in some cases anthophyllite, is also present in the talc in amounts significant enough to give rise to airborne levels in excess of the action level (i.e. 0.1 f/cc). However, in the case of crushed stone or aggregate rock, OSHA believes, based on the available evidence, that the small amounts of non-asbestiform minerals present in this rock would not generally result in exposure to employees to airborne levels greatly below the action levels of the revised asbestos standards. Because little airborne exposure and

thus *de minimis* occupational risk is likely to occur, OSHA believes it would be warranted in exempting these sectors of the industry from the exposure monitoring and labeling requirements of the revised asbestos standards.

Furthermore information presented by the National Stone Association (NSA) and the U.S. Bureau of Mines indicates that substantial costs would be incurred by the crushed stone industry in order to meet the monitoring and labeling requirements of the revised asbestos standards. For example the NSA states that various geological/mineralogical and exposure assessments would be required to meet the exposure monitoring and labeling requirements of the revised asbestos standards (Ex. 438). They estimate that these assessments would result in costs ranging from approximately $500–$400,000 per operation, resulting in a potential cost of almost 0.5 billion dollars nationwide. Similarly the Bureau of Mines state that preliminary deposit evaluations and deposit sampling, which would be necessary to meet requirements of the revised asbestos standards, would result in a annualized cost of 22 million dollars for the crushed stone industry (Ex. 471). Additionally they estimate that 7% of the crushed stone quarries would be forced to close. OSHA agrees that the economic impacts could be substantial for these industry sectors if the type and degree of geological and mineralogical evaluations anticipated by the crushed stone industry are realistically performed. OSHA believes that such expense and effort may be unwarranted as the evidence seems to indicate that these operations involving crushed stone would, for the most part, not be expected to expose employees to significant exposure ranges and thus the benefit of requiring monitoring would be *de minimis*.

However for other operations, such as the use of tremolitic talcs, where non-asbestiform minerals may be a significant component, the available evidence indicates that employees may be exposed to non-asbestiform minerals in exposure ranges above the action level (i.e. 0.1 f/cc) (Ex. 465). For these types of situations no exemption from the monitoring and labeling requirements would be warranted.

Based on the possible exemptions discussed above and the information gathered by the CONSAD Research Corporation (Ex. 465), OSHA estimates that the average annual costs of compliance would be approximately 11 million dollars. Based on these estimates OSHA has preliminarily determined that regulating non-asbestiform tremolite, anthophyllite and actinolite under the revised asbestos standards is a feasible option if an exemption for initial monitoring and labeling for crushed stone is included. Comments are specifically invited on the appropriateness of exempting crushed stone from these provisions.

A second option under consideration by OSHA is to regulate non-asbestiform tremolite, anthophyllite, and actinolite under the provisions of the 1972 Asbestos Standard (29 CFR 190.1101). This standard is currently being enforced to provide continuity of protection until this supplemental rulemaking is completed. OSHA would modify this standard to remove all language referring to asbestos. Definitions would also be added to clarify that only non-asbestiform tremolite, anthophyllite and actinolite would be included under the scope of the standard. OSHA would continue its enforcement of this standard at the 2 f/cc level. OSHA requests comment on how the 1972 Asbestos standard could be further modified to deal with the specific concerns associated with non-asbestiform tremolite, anthophyllite and actinolite.

A third option is to exclude non-asbestiform tremolite, anthophyllite and actinolite from the scope of the revised asbestos standards and to initiate a separate 6(b) rulemaking to develop a comprehensive standard for either (1) industrial talc (e.g. tremolitic talc) or (2) non-asbestiform minerals which attain dimensions greater than 5 microns in length and aspect ratios greater than 3:1 or other appropriate dimensions. However in using this approach OSHA would not be able to proceed to a final without first issuing another proposal. This proposal would specify particular provisions, present feasibility determinations, and provide opportunity for public comment on the proposed regulatory provisions. These substance specific standards may include provisions such as exposure monitoring, housekeeping, personal protective equipment, medical surveillance and communication of hazards. This approach would insure that employees exposed to non-asbestiform minerals would receive some level of regulatory protection. The appropriateness of this approach would of course be considered in light of the Agency's regulatory priorities and the magnitude of the health risks posed by these minerals.

There are several epidemiological studies which report adverse health effects from talc exposures. Primary among these are the studies of upstate New York talc miners and millers. Among these workers, NIOSH reported an excess risk of lung cancer, nonmalignant respiratory disease and decreased pulmonary function (Exs. 84–25, 84–181, 439, and 473). As discussed earlier in the health effects section, these studies cannot be used to show that non-asbestiform cleavage fragments of tremolite or anthophyllite are the etiologic agent responsible for the observed excess of disease. However OSHA believes that exposures at the facility, where industrial talc is mined and milled, may possibly be the cause for the observed adverse health effects. Furthermore in his analysis of these studies, William Nicholson has also calculated preliminary risk estimates and has concluded that these risks are similar to the fiber-related risks observed among asbestos workers (Ex. 474). Similar adverse health effects have also been reported in several other studies where exposures to talc has been involved (Exs. 84–140, 84–141, 84–191, 84–402 and 84–460, 84–461 and 410–9). For these reasons a separate rulemaking on industrial talc may be warranted, although OSHA has not conducted a quantitative risk assessment to determine if the risk would be significant.

OSHA also believes that this would be a feasible regulatory alternative. This preliminary determination is based on information on compliance with the revised asbestos standards gathered by CONSAD (Ex. 465). As stated earlier OSHA determined that it would be feasible for users of tremolitic talc to comply with the revised asbestos standards. Thus OSHA believes that the cost estimates for complying with the revised asbestos standards could be used to represent the upper bound of the estimated compliance costs that would be incurred to comply with an industrial talc standard. In both situations the primary sectors of the industry involved are the users of tremolitic/industrial talcs. OSHA anticipates that the annual compliance costs for an industrial talc standard would not exceed the costs required to comply with the revised asbestos standard and would most likely be much less.

The evidence showing that non-asbestiform minerals present a risk is supported also by the mechanistic information presented by Stanton (Exs. 84–93 and 84–195), Harrington (Ex. 84–131), Pott (Ex. 84–173), Wagner (Ex. 84–198), Wright and Kushner (Ex. 84–210), Bertrand and Pezerat (Ex. 84–114) and Bonneau (Ex. 410–11). These studies suggest that all durable minerals such as non-asbestiform tremolite, anthophyllite and actinolite, which attain specific

dimensions, have carcinogenic potential. As discussed earlier OSHA believes that durability and dimension are primary factors associated with asbestos related diseases. Thus although OSHA has preliminarily concluded that the health effects evidence is not sufficient to conclude that asbestiform and non-asbestiform minerals present a similar magnitude or type of carcinogenic risk, OSHA continues to believe that the positive information on asbestiform minerals and other durable minerals suggests that non-asbestiform minerals may possess properties which would present other respiratory hazards to exposed workers. Thus regulatory protection would be warranted if these risks were considered by OSHA to be significant.

A fourth set of options would be to regulate these substances under a listing in a table of the Air Contaminant Standard (29 CFR 1910.1001 (1989)). Options under this approach include applying the limit for "Talc (containing no asbestos)", which is 2 mg/m^3; creating a new listing for Table Z–1–A for non-asbestiform tremolite, anthophyllite and actinolite; amending the Talc listing by adding a listing for "tremolitic talc" or applying the limit for "particulates not otherwise regulated" in Table Z–1–A.

Inclusion under the Air Contaminant Standard would have the advantage of simplicity. However, missing from this approach would be the incremental benefits of a comprehensive health standard, in particular monitoring and medical surveillance provisions.

The health justification for these options are the same as those stated above in the discussion on developing comprehensive standards for industrial talc and non-asbestiform minerals. As before OSHA feels that such an approach may be justified on the basis of guarding against the adverse health effects which have been reported in the health effects evidence. This type of "Air Contaminant" approach in some circumstances would be easier and faster to implement, however it might also provide less protection for exposed workers due to the fact that ancillary measures present in comprehensive standards are omitted from the regulatory structure.

OSHA requests comments on these or other available options which may be appropriate to reduce the potential risks associated with exposure to non-asbestiform tremolite, anthophyllite and actinolite. OSHA's regulatory approach will be based on information in the rulemaking record and the Agency's authority under the OSH Act as described earlier in Section 2 on Pertinent Legal Authority.

Another regulatory measure urged by some commenters (Exs. 402, 406, 423–A, 433) is for OSHA to change its definition of fiber in order that a differentiation can be made between asbestiform fibers and non-asbestiform cleavage fragments. OSHA notes that a need for this distinction would only arise in occupational environments where it is likely that asbestos and non-asbestiform minerals are present in detectable quantities and where they are regulated differently.

In the current revised standards for asbestos, exposure levels are measured in fibers per cubic centimeter (f/cc) of air where "fibers" are defined as particles of the regulated minerals which have lengths greater than 5 micrometers and aspect ratios greater than or equal to 3:1. OSHA requires the use of phase contrast microscopy (PCM) to make these exposure measurements.

However, the commentors point out that PCM only distinguishes differences in dimensions between the particles in the sample. Therefore in samples composed of a mixture of minerals, PCM often cannot be used to differentiate between particles which are asbestos fibers and particles which are non-asbestiform cleavage fragments. Furthermore, since cleavage fragments often obtain aspect ratios of 3:1, they will be counted as asbestos fibers unless more sophisticated forms of microscopic analysis are used (e.g. polarized light microscopy (PLM) or transmission electron microscopy (TEM)). Each of these methods is more precise for mineral identification; however, these methods also require much more expertise on the part of the microscopist both in terms of performing the analyses and interpreting the results. These types of analyses are also more prone to misinterpretation. Because more judgement and professional experience is required in using these types of microscopic analyses the results are also less reproducible. In addition these methods are more expensive and there are fewer laboratories and experienced microscopists with the ability to perform these analyses. OSHA agrees that more advanced types of microscopic analysis are more costly and difficult to implement for routine monitoring. These are the main reasons that OSHA adopted PCM as the preferred method for exposure monitoring in the revised asbestos standards (51 FA 22684). This procedure received broad support in the asbestos rulemaking.

Because of the difficulty and cost associated with using more advanced methods of microscopic analysis, several commenters (Exs. 410–14, 423–A, 431–A and 433), have proposed an alternative method for differentiating between asbestiform fibers and non-asbestiform cleavage fragments. They have proposed that OSHA change its definition of "fiber" by increasing the aspect ratio criterion from 3:1 to 10:1 in the asbestos standard. These commenters have stated that if fiber counts are made using the PCM method and a 10:1 aspect ratio, non-asbestiform cleavage fragments, which typically have aspect ratios of 3:1 or lower, will not be counted. In this way one can differentiate between asbestos fibers and non-asbestiform cleavage fragments without having to use more advanced microscopic techniques.

These recommendations were based on fiber studies on the size distributions of airborne asbestos fibers and non-asbestiform cleavage fragments by Dr. Ann Wylie (Exs. 410–14 & 422). In these studies Dr. Wylie observed that in airborne samples from asbestos mining and bagging operations, all asbestiform fibers of crocidolite, amosite and chrysotile, greater than 5 micrometers in length, had aspect ratios greater than 10:1. However in airborne samples of non-asbestiform minerals from lead and gold mines in Minnesota and South Dakota, less than 16% of the non-asbestiform cleavage fragments of cummingtonite-grunerite and actinolite had aspect ratios greater than 10:1. Based on these findings Dr. Wylie concluded that making fibers counts with PCM using an aspect ratio of 10:1 would in effect exclude cleavage fragments since the majority of these fragments have aspect ratios of 3:1 or less and would not be counted. In addition Dr. Wylie added that the same number of asbestos fibers will be counted using a 10:1 aspect ratio that would be counted using an aspect ratio of 3:1 and thus a change in aspect ratio to 10:1 would not effect compliance with current revised standards for asbestos.

Dr. William Nicholson has reviewed Dr. Wylie's distribution studies (Ex. 474) and has concluded that the discrimination between asbestos fibers and non-asbestiform cleavage fragments, that might be achieved by use of a higher aspect ratio, is less than that claimed by Wylie. For example, he argues that Dr. Wylie made her percentage comparisons by counting all particles greater than 5 micrometers, irrespective of aspect ratio. Nicholson states that if aspect ratio is considered in making percentage comparisons, twice as many cleavage fragments have an apsect ratio of 10:1 or more than is

claimed by Wylie. OSHA believes that this may be a significant flaw in the Wylie analysis. Thus Nicholson's analysis suggests that there may be fiber populations in which a 10:1 aspect ratio may not exclude cleavage fragments from particle counts, as there may be a greater percentage of fragments greater than 10:1 than reported by Wylie. Also there may be more asbestiform fibers with aspect ratios less than 10:1. This is an important point to consider given the fact that the health evidence indicates that asbestiform fibers with aspect ratios between 3:1 and 10:1 may induce carcinogenic responses. If an 10:1 aspect ratio were adopted, asbestiform fibers in this size range would be excluded from regulation.

Thus although Dr. Wylie's work is important with respect to the distribution of fibers in some situations, OSHA is hesitant to change a method which has been widely adopted and used as an acceptable and reliable indicator of asbestos exposure based on the findings of one study. In particular OSHA is concerned about the extent to which this fiber distribution study is representative of the variety of fiber populations to which workers may be exposed. As has been discussed earlier, there is also evidence to suggest that asbestos fibers with aspect ratios below 10:1 have carcinogenic potential. Therefore OSHA is concerned about one, the extent to which workers may be exposed to such particles (i.e. asbestiform fibers with aspect ratios less than 10:1) and two, the effect that excluding such particles from regulation might have upon the health of those workers.

OSHA acknowledges that in some situations (i.e. for submicron particles) PCM may be unable to differentiate between asbestiform fibers and other mineral particles in the sample. However OSHA also notes that the Agency allows the use of differential counting which is the exclusion of particles from PCM counts which meet the dimensional criteria for a "fiber" but are not minerals regulated by the standards. OSHA believes that a trained analyst will be able to use professional judgement and knowledge of different fiber types and characteristics in situations where there are mixed mineral populations. Futhermore information supplied by the sampler or the company can be used to alert the analyst of potential different fiber types or other contaminants and thus assist in the proper identification of particles collected on the air filters. OSHA has found this to be a reliable approach when dealing with contaminants other than non-asbestiform tremolite, anthophyllite and actinolite.(e.g. gypsum, fiberglass, organic fibers). In situations where asbestiform fibers are known to exist and to be the predominant exposure, PCM and aspect ratios of 3:1 will provide a reliable index of exposure. Thus, OSHA does not propose to change its dimensional criteria for aspect ratio in its definition of fiber.

VII. Summary and Explanation of the Proposed Amendments

The following section discusses those proposed changes under consideration by OSHA during the supplemental rulemaking for non-asbestiform tremolite, anthophyllite and actinolite which would be made if OSHA decides to exclude non-asbestiform tremolite, anthophyllite, and actinolite from the scope of §§ 1910.1001 and 1926.58. The purpose of this discussion is to clarify OSHA's position on certain definitions and provisions specifically relating to non-asbestiform tremolite, anthophyllite and actinolite. This discussion applies to both the general industry and construction industry standards for asbestos. A complete discussion of other provisions, not discussed in this section, can be found in the Summary and Explanation sections of the preamble for the final asbestos standards (Sections X and XI, 51 FR 22677, 22705).

1. Definitions

Asbestos

In the 1986 revised standards for asbestos, tremolite, anthophyllite and actinolite, OSHA amended its definition of asbestos in recognition of the fact that different mineral forms exist. "Asbestos" was defined to include only the six asbestiform minerals chrysotile, crocidolite, amosite, tremolite asbestos, anthophyllite asbestos, and actinolite asbestos. However in these revised standards OSHA also added a definition for tremolite, anthophyllite and actinolite. Tremolite, anthophyllite, and actinolite without a modifying term such as asbestos or asbestiform referred to only the non-asbestiform forms of these three minerals. This definition was added to make it clear that all mineral forms would continue to come under the scope of the revised standards.

In this proposed standard OSHA retains its definition of asbestos as stated in the 1986 revised standards. The Agency is proposing to delete the non-asbestiform minerals from the scope of the revised standards for asbestos and from all paragraphs, and appendices which reference "non-asbestiform tremolite, anthophyllite, and actinolite". As discussed, however, OSHA is also considering other alternatives that include regulating non-asbestiform tremolite, anthophyllite and actinolite as asbestos.

VIII. Public Participation—Notice of Hearing

A. Submission of Comments to the Docket

OSHA has established Docket H–033 for asbestos rulemaking evidence. Although the final decision regarding the fiber issues considered in this rulemaking will be based on the entire H–033 docket, OSHA has established a subcategory, H–033–d to distinguish information specifically designated for this rulemaking issue from the previous rulemaking record and another ongoing rulemaking. A subcategory also has been created, H–033–e, for purposes of containing evidence related to the U.S. Court of Appeals decision remanding certain rulemaking issues, which will be the subject of a separate rulemaking. The following summarizes the asbestos docket nomenclature:

H–033a	1972 Rulemaking.
H–033b	1975 Rulemaking.
H–033c	1986 Rulemaking.
H–033d	Non-asbestiform issues.
H–033e	Court remand issues.

B. Public Hearings

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard will be provided at an informal public hearing scheduled to begin at 10:00 a.m. in Washington, DC: May 8, 1990. The Auditorium, Frances Perkins Department of Labor Building, 200 Constituion Avenue, NW., Washington, DC 20210.

All persons desiring to participate at the hearings must file in quadruplicate a notice of intention to appear postmarked on or before April 9, 1990 addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H–033d, Room N–3662, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone 202–523–8024.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Docket Office (Room N–2625), telephone 202–523–7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;

2. The capacity in which the person will appear;

3. The approximate amount of time requested for the presentation;

4. The specific issues that will be addressed;

5. A detailed statement of the position that will be taken with respect to each issue addressed; and

6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

C. Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing to the OSHA Division of Consumer Affairs. This material must be postmarked by April 23, 1990 and will be available for inspection and copying at the OSHA Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation, and may be requested to return for questioning at a later time.

D. Conduct of Hearings

The hearings will commence at 10:00 a.m. according to the schedule specified above, with resolution of any procedural matters relating to the proceeding. The hearing will be conducted in accordance with 29 CFR part 1911 and the prehearing guidelines which will be sent to all persons who file a notice of intention to appear. The hearings will be conducted in as expedited a manner as possible, compatible with a full development of the record and the rights of the parties.

The hearings will be presided over by an Administrative Law Judge who will have all the powers necessary or appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 and the prehearing guidelines, including the powers:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections, and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To limit the time for questioning;

5. To regulate the conduct of the hearing by appropriate means; and

6. To keep the record open for a reasonable stated time to receive additional written data, views and arguments from any person who has participated in the oral proceeding.

Following the close of the hearings or of any posthearing comment period, the presiding Administrative Law Judge will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of a final standard. The proposed standard will be reviewed in light of all oral and written submissions received as part of the record, and final decisions will be taken by the Assistant Secretary based upon the entire record in this proceeding.

List of Subjects in 29 CFR Parts 1910 and 1926

Non-asbestiform tremolite, Anthophyllite, Actinolite, Asbestos, Cancer, Health, Exposure monitoring, Occupational safety and health.

IX. Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Pursuant to sections 6(b) and 8 of the Occupational Safety and Health Act (29 U.S.C. 655, 657), it is hereby proposed to remove non-asbestiform tremolite, anthophyllite and actinolite from the scope of the revised standards for the occupational exposure to asbestos.

Signed at Washington, DC, this 2nd day of February, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Part 1910 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1910—[AMENDED]

Subpart Z—[Amended]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 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 2 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 Section 6(a) (5 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. 533. Section 1910.1000, Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the 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. 653.

Section 1910.1003 through 1910.1018 also issued under 29 CFR part 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 5 U.S.C. 553.

§ 1910.1001 [Amended]

2. Section 1910.1001 (including the appendices to the section) is amended as follows:

a. By removing the phrase "Asbestos, tremolite, anthophyllite, and actinolite" wherever the phrase occurs, and inserting term "Asbestos" in its place.

b. By removing the phrase "asbestos, tremolite, anthophyllite, or actinolite" wherever the phrase occurs, and inserting the term "asbestos" in its place.

c. By removing the phrase "asbestos, tremolite, anthophyllite, actinolite, or a combination of the materials" wherever the phrase occurs, and inserting the term "asbestos" in its place.

d. By removing in paragraph (b) Definitions, the definition for "Tremolite, anthophyllite, and actinolite".

e. By removing in paragraph (j), paragraphs (j)(1)(iii) and (j)(2)(iii).

Part 1926 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

Subpart D—[Amended]

3. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Sections

1926.55(c) and 1926.58 also issued under 29 CFR part 1911.

§ 1926.58 [Amended]

4. Section 1926.58 (including the appendices to the section) is amended as follows:

a. By removing the phrase "Asbestos, tremolite, anthophyllite, and actinolite" wherever the phrase occurs, and inserting the term "Asbestos" in its place.

b. By removing the phrase "asbestos, tremolite, anthophyllite, or actinolite" wherever the phrase occurs, and inserting the term "asbestos" in its place.

c. By removing the phrase "asbestos, tremolite, anthophyllite, actinolite, or a combination of the materials" wherever the phrase occurs, and inserting the term "asbestos" in its place.

d. By removing the phrase "asbestos, tremolite, anthophyllite, actinolite" wherever the phrase occurs, and inserting the term "asbestos" in its place.

e. By removing the phrase "asbestos, tremolite, anthophyllite, or actinolite or materials containing asbestos, tremolite, anthophyllite, or actinolite" wherever the phrase occurs, and inserting the term "asbestos" in its place.

f. By removing in paragraph (b) Definitions, the definition for "Tremolite, anthophyllite, and actinolite".

g. By removing in paragraph (k), paragraphs (k)(1)(iii) and (k)(2)(iv).

[FR Doc. 90-3035 Filed 2-9-90; 8:45 am]
BILLING CODE 4510-26-M

federal register

Monday
February 12, 1990

Part III

Environmental Protection Agency

40 CFR Part 152 et al

Pesticide Export Policy Review and Labeling Requirements for Pesticides, Devices, and Pesticide Active Ingredients Intended for Export; Proposed Policy Statements

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 155, 156, 157, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173 and 180

[OPP-170001; FRL 3690-3]

Pesticide Export Policy Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement.

SUMMARY: EPA is proposing to revise its pesticide export policies, and invites public review and comment on its proposals. EPA has undertaken a comprehensive review of its pesticide export policy and has examined: EPA's international notice transmittal system; the program to ensure exporters' compliance with regulatory requirements; the notification system's compatibility with international procedures; the confidential nature of information collected on pesticide exports; other international pesticide activities and their relationship to the Agency's goals in this area. This review has led EPA to propose changes in its existing export policies. EPA expects these changes to result in a program more responsive to the concerns of the U.S. public, international organizations, and representatives of other countries about international trade in and use of pesticides.

DATES: Comments on the proposed revisions must be received on or before May 14, 1990.

ADDRESSES: Submit written comments, bearing the identification number OPP-170001, by mail to: Public Docket Field Operations Division (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460 U.S.A. In person, deliver comments to: Rm.246, CM #2 1921 Jefferson Davis Highway, Arlington, Virginia.

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

FOR FURTHER INFORMATION CONTACT: By mail: Cathleen McInerney Barnes (Project Coordinator), Office of Pesticide Programs, H7501C, U.S. Environmental Protection Agency, Washington, DC 20460 U.S.A. Office Location: CM #2, Rm. 1115, 1921 Jefferson-Davis Highway, Arlington, Virginia. Telephone: 703-557-7102. Facsimile: 703-557-8244 Telex: 202-382-7883.

SUPPLEMENTARY INFORMATION: This Notice containing EPA's proposed revisions to its pesticide export policy has six units. Unit I gives background information, including a profile of pesticide exports from the United States, the legal authority for regulating exports and establishing a notification system, EPA's 1980 policy statement under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), previous evaluations of the system, and reasons for the current review. Unit II describes the goals and objectives of the EPA's international activities program in the pesticide area. Unit III summarizes the proposed statement of policy for FIFRA section 17(a), which relates to the requirements for pesticide products exported from the United States; the full statement of the FIFRA section 17(a) policy is being published separately elsewhere in this **Federal Register**. Unit IV proposes revisions to policies under FIFRA section 17(b), which relates to world-wide notifications of EPA's regulatory actions affecting pesticides. Unit V reviews the confidentiality of export information. Unit VI describes EPA's FIFRA section 17(d) policy activities, related to international pesticide projects and programs in which EPA is engaged.

I. Background

A. Global Pesticide Market; Exports From United States; Pesticide Usage; Agricultural Imports

EPA estimates that 4.2 to 4.5 billion pounds of conventional pesticides (measured as active ingredients) are produced and used in the world annually. About three fourths of this (3.4 billion pounds) is used for agricultural purposes. The remainder (about 1.1 billion pounds) is used for non-agricultural purposes. The United States, along with other industrialized countries such as West Germany and the United Kingdom, is a major exporter of pesticides. In 1988, the United States exported approximately 450 million pounds of active ingredient pesticides; this figure represents approximately 30 percent of overall U.S. pesticide production, and approximately 10 percent of the total world pesticide consumption, not including wood preservatives or disinfectants. Figures compiled by the Department of Commerce place the value of U.S. pesticide exports at almost $1.7 billion for 1988.

The United States is also a major importer of agricultural commodities. In general, imports comprise about 15 percent of total U.S. agricultural product consumption. For certain items—coffee, bananas and cocoa, for example—imports are a much higher percentage of the total U.S. consumption. Pesticides are used in the production of many of the imported food commodities that Americans consume.

As a major exporter of pesticides, and a major importer of pesticide treated foods, the United States has a great interest in ensuring that pesticides are used responsibly throughout the world. FIFRA gives EPA specific authority to enact programs designed to address issues concerning international pesticide use.

B. Legal Authority

Provisions of FIFRA section 17 concerning imports and exports of pesticides were first enacted in the Federal Environmental Pesticide Control Act of 1972 (Pub.L. 92-516) which amended FIFRA. The provisions for export notification (section 17(a)) were added in amendments to FIFRA through the Federal Pesticide Act of 1978, on September 30, 1978 (Pub.L. 95-396). Currently, section 17 reflects an active but somewhat limited role for EPA in the export of pesticides. The primary emphasis of this section is on the provision of information by EPA to foreign governments. Section 17 of FIFRA currently mandates two systems of notification: a notice to the government of an importing country of the export of unregistered pesticides (section 17(a)(2)) and a notice to all countries of certain regulatory control actions taken by EPA (section 17(b)). In addition, the statute (section 17(d)) directs EPA to participate in international efforts in pesticide research and regulation.

1. *FIFRA section 17(a).* FIFRA section 17(a) provides as follows:

(a) *Pesticides and Devices Intended for Export.*—Notwithstanding any other provision of this Act, no pesticide or device or active ingredient used in producing a pesticide intended solely for export to any foreign country shall be deemed in violation of this Act-

(1) when prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices and active ingredients

used in producing pesticides shall be subject to sections 2(p), 2(q)(1) (A), (C), (D), (E), (G), and (H), 2(q)(2) (A), (B), (C) (i) and (iii), and (D), 7, and 8 of this Act; and

(2) in the case of any pesticide other than a pesticide registered under section 3 or sold under section 6(a)(1) of this Act, if, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States under this Act. A copy of that statement shall be transmitted to an appropriate official of the government of the importing country.

2. *FIFRA section 17(b).* FIFRA section 17(b) provides as follows:

(b) *Cancellation Notices Furnished to Foreign Governments.*—Whenever a registration, or a cancellation or suspension of the registration of a pesticide becomes effective, or ceases to be effective, the Administrator shall transmit through the State Department notification thereof to the governments of other countries and to appropriate international agencies. Such notification shall, upon request, include all information related to the cancellation or suspension of the registration of the pesticide and information concerning other pesticides that are registered under section 3 of this Act and that could be used in lieu of such pesticide.

3. *FIFRA section 17(d).* FIFRA section 17(d) provides as follows:

(d) *Cooperation in International Efforts.*—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

C. Evaluations of Systems

Over the past few years, EPA has taken steps to assess the effectiveness of its notification programs under both FIFRA sections 17 (a) and (b).

1. *Evaluation in Africa: 1984.* In June 1984 an EPA official conducted research in Kenya, Senegal and Zambia on the effectiveness of EPA's programs for export notices and notices of control actions. At that time, none of the governments interviewed had received these types of notices from foreign governments other than the United States. During the 1984 review, the African officials indicated that they gave considerable weight to the regulatory decisions of EPA, and that they wished to be notified when pesticides imported from the United States were not approved by EPA. The EPA reviewer concluded that the notification systems were potentially valuable but were less effective than they could be because of difficulties in the notice transmittal process and in notice clarity. The reviewer indicated that even minor changes in the system could greatly enhance the utility of the notices to the other governments. Many of the improvements recommended, such as providing instructions to embassies and improving the content of the control action notices, were implemented by EPA.

It is important to note that when this research was conducted, the African officials in charge of pesticides had few sources of information about the importation and use of pesticides in their countries. They welcomed the U.S. notifications as a principal source of information about pesticide imports.

2. *Evaluation in Latin America: 1987.* In August of 1987, EPA, in cooperation with the Organization of American States (OAS), conducted another evaluation of the U.S. notification systems and issued a report entitled, "Trade of Toxic Products: U.S. Notification Process and its Functioning in Selected Latin American and Caribbean Countries." The study was conducted to determine the types of information which would best suit the needs of the importing country and to evaluate the efficacy of procedures then in use by EPA in its notification processes. The study, like the one conducted in Africa, addressed both the FIFRA section 17(a) notices of export and section 17(b) notices of control action.

While noting problems in the notice transmittal process, many of the government officials who were interviewed questioned the ultimate effectiveness of any type of notification as a means of adequately addressing the problems of pesticide use in developing countries. Most government officials indicated that they would prefer to rely upon their own registration systems as the primary means of determining which pesticides should be used in their own country. They also emphasized that for any notification system to be useful, it had to supplement a domestic regulatory control program, and it had to relate to exports from all countries, rather than a select few. These points confirmed EPA's findings in the 1984 African evaluation.

The report concluded that while there were deficiencies in the U.S. notification systems, improving the notification system would not solve all of the problems related to pesticide use in the importing countries. The report recommended that issues concerning pesticide use and misuse in developing countries be addressed comprehensively, and that the United States consider providing information and assistance in many forms. It concluded that many countries need assistance in providing training and education to pesticide users and the public about the dangers involved with pesticide use, and about the best methods of applying pesticides to minimize risk. Finally, the report concluded that many countries need assistance in developing their own regulatory programs, so that they can properly regulate all pesticides used in their country, not just those that are imported pesticides.

At the time of the report, EPA did not act to change its notification system. International discussions were underway to revise international notification systems, and the U.S. Congress was contemplating legislative changes, as well. EPA decided to wait until agreement was reached on other international systems before amending its own system. However, to address the problems identified in the 1984 and 1987 studies, EPA has offered technical advice and training to countries requesting assistance on pesticide issues. In particular, EPA has helped developing nations which often lack governmental programs to regulate pesticides.

3. *U.N. Food and Agriculture Organization (FAO) Review: 1986.* At the end of 1986, FAO circulated a questionnaire to all member governments on the implementation of the International Code of Conduct on the Distribution and Use of Pesticides. By the end of 1988, 115 countries had responded (73 percent). The questionnaire addressed each article of the Code and was designed to evaluate the status of implementation of the concepts of the Code.

Of particular interest for EPA's export policy were questions directed to Article 9, "Information Exchange," which directs member governments to implement notification systems for control actions and exports of banned or severely restricted pesticides. According to an FAO analysis of the responses, 39 of 93 developing countries did not receive information on banned or severely restricted pesticides which were in international trade. Those which did receive notice were asked to name countries which provided such information. The country most often named was the United States.

Importantly, 63 percent (57 of 91) of the developing countries reported that they did not have internal systems in place to process data on pesticides prior to importation. These responses reaffirm EPA's conclusion that improving notification procedures is not enough. Developing countries need help in establishing pesticide regulatory programs in order to understand and

utilize the information they receive on pesticides.

D. Reasons For This Review

1. *Congressional oversight.* In April 1989, the General Accounting Office issued a report to the Chairman of the Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations, of the U.S. House of Representatives, entitled, *PESTICIDES: Export of Unregistered Pesticides is not Adequately Monitored by EPA* (GAO/RCED-89-128). GAO identified problems in EPA's monitoring program regarding the section 17(a) export notification requirement and reported that foreign countries were not adequately notified on pesticides of U.S. concern pursuant to section 17(b). GAO recommended to the EPA Administrator that EPA take actions to strengthen its oversight of pesticide exports, including (1) monitoring compliance with export notification requirements; (2) changing its enforcement policy concerning the export of unregistered pesticides under section 17(a); and (3) developing criteria and procedures to improve preparation and issuance of section 17(b) notices of control actions, specifically addressing the issue of what constitutes a "significant action" on a pesticide.

Subsequently, on May 3, 1989, the Environment, Energy, and Natural Resources Subcommittee, held a hearing on the topic of pesticide exports. In addition to the issues raised in the GAO report, the Subcommittee requested that EPA officials address trends in U.S. pesticide production and exports; EPA's performance and policies relating to the implementation, monitoring, and enforcement of section 17 of FIFRA; EPA's responsibilities under the Federal Food, Drug and Cosmetic Act (FFDCA) to establish pesticide tolerances (maximum level of pesticide residue permitted on food or feed) and efforts by EPA to assist the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) in the identification of potentially adulterated food imports; U.S. involvement in international discussions relating to the Prior Informed Consent (PIC) concept; and EPA efforts to provide technical assistance to foreign countries.

EPA officials testified at the hearing that EPA's implementation of the notification procedures needed improvement and agreed to review its program and propose alternatives that would be more effective in communicating to other governments the potential risks associated with certain pesticides. EPA also indicated it had already concluded that notification systems alone would not resolve the types of problems associated with the use of pesticides in developing countries and therefore had concentrated its limited resources on providing technical assistance. This export policy review was initiated at the conclusion of that hearing.

2. *Health and environmental concerns.* EPA has also undertaken this review in response to a growing concern among the public about the contribution of American made pesticides to health and environmental problems in the developing world. EPA, too, is concerned about the quality of the global environment and about the public health around the world, and believes that it is appropriate to reexamine its policies to see how it can better address these concerns.

Some segments of the American public have expressed the view that the United States should not permit the export of pesticides that are prohibited for domestic use. Representatives of some developing countries have expressed similar views at international meetings but no international consensus exists on this issue. EPA has based its existing policies, in part, on a number of premises. First, controlling the export of products from our country alone will not completely resolve the problems associated with pesticide misuse in developing countries. The United States is not the only country from which pesticide products are exported. Many countries, including those in the developing world, have manufacturing capabilities to produce and export the same pesticide products that have been banned or severely restricted in the United States or other industrialized countries. Second, EPA regulatory decisions are based upon risk benefit criteria for the United States, which may differ in other countries. And third, EPA believes that it may be more effective to concentrate on controlling the use of pesticide products, and assuring the availability of quality products to those wishing to use them, rather than categorically banning certain classes of U.S. pesticides from international trade.

The public has also expressed concern about the possibility of importing foods which may contain illegal residues of pesticides that can no longer be used here. This threat has been characterized as a "circle of poison." The perception is widespread that pesticides banned for use in the United States, but exported to developing countries, are returned to the United States in the form of illegal residues on imported foods. The U.S. Government has several programs in place to address this concern.

Under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA is responsible for setting tolerances (maximum permissible residue levels) for pesticides in or on food and feed crops. While these tolerances are established by EPA, the U.S. Food and Drug Administration is responsible for enforcing tolerances through surveillance monitoring. FDA monitors all food and feed crops, except for poultry and meat which are the responsibility of the United States Department of Agriculture (USDA).

The monitoring program consists of the collection of samples from individual lots of domestically produced and imported foods and an analysis of those samples for pesticide residues. The analytical methods used to measure the residues are generally capable of determining levels well below tolerance values. When residues in violation of tolerance levels are found in domestic samples, various sanctions such as seizure or injunction may be initiated. When violations are found in import samples, shipments may be detained at the port of entry.

When a shipment of an imported food from a particular grower or shipper is found to contain illegal pesticide residues, FDA may invoke automatic detention for future shipments of the food from that same source. While automatic detention is in effect, the importer is responsible for having each shipment of the commodity in question analyzed and certified by a private laboratory to be free of violative levels of the specific residue(s) in question. FDA frequently cooperates with states and foreign governments in its monitoring program.

The most recent statistics on FDA monitoring activities, which were compiled for Fiscal Year 1988 (October 1, 1987, through September 30, 1988), show that 18,114 samples were analyzed for pesticide residues. The analytical methods applied allowed detection of 256 separate pesticides. Imported foods represented greater than 57 percent of the total number of samples analyzed (or a total of 10,475 import samples analyzed). Of the imported samples analyzed, 62 percent had no detectable residues, less than 1 percent had over-tolerance residues, and 5 percent had residues of pesticides for which there are no tolerances for the particular pesticide/commodity combination. In cases where no tolerance existed, or where residues were over-tolerance, appropriate action was initiated.

In the past few years, FDA has placed an increased emphasis on the monitoring of imported foods. The results of this monitoring demonstrate that the dietary intakes of pesticide residues from the consumption of imported products are well below the standards set by EPA and international organizations such as FAO and the World Health Organization (WHO).

Additionally, EPA has in place a program to revoke tolerances when a pesticide's registration for a food or feed use is cancelled because of safety concerns. Revoking tolerances would likely discourage misuse as well as discourage persons in other countries from exporting, to the United States, foods bearing residues of pesticides which have been cancelled in the United States. When a notice of intent to cancel a pesticide is published, EPA's practice is to simultaneously publish a proposed tolerance revocation notice and, if possible, a notice proposing the establishment of action levels. Action levels are temporary replacement levels for tolerances which are recommended to FDA for enforcement purposes. They are usually lower than the tolerance they replace, to reflect residues presently occurring in food and feed commodities. Action levels are set because some pesticides are persistent in the environment and residues may be present in raw agricultural commodities, processed foods, and feeds for a significant time period, despite cessation of use on such commodities. As a cancelled pesticide dissipates from the environment, EPA's policy is to periodically review and lower action levels. Details on the procedures for converting tolerances to action levels are described in EPA's "Policy Statement on Revocation of Tolerances for Cancelled Pesticides," (47 FR 42956, September 29, 1982).

The quality and safety of the American food supply is a high priority for EPA. EPA is reexamining its activities and policies to see if there are changes which might increase the certainty that imported foods comply with U.S. safety standards. Specifically, EPA is evaluating the effectiveness of the tolerance program under FFDCA sections 408 and 409 and has established a workgroup which is considering the compatibility of U.S. tolerances with those of the Codex Alimentarius Commission, a joint program of the FAO and World Health Organization which establishes international food safety standards.

In addition, EPA is considering the feasibility of providing additional technical assistance and training in the regulation of pesticides to countries from which the United States imports a significant percentage of its agricultural produce in order to ensure the quality and safety of our imported foods. The criteria for targeting such technical assistance and training might include the amount and type of produce exported to the United States, the sophistication of that country's pesticide regulatory control program, the types of pesticides used on exported commodities, and whether the country has requested any assistance.

3. *International activities—prior informed consent (PIC).* Another reason for this review of export policy is to bring U.S. activities into conformity with recently developed international procedures concerning international notifications related to pesticides and other industrial chemicals. EPA seeks, to the extent possible, to make its domestic regulatory requirements consistent with the approach taken internationally, in order to enhance its effectiveness and to avoid any duplication of effort.

In 1989, the FAO and the U.N. Environment Programme (UNEP) jointly adopted procedures, known as Prior Informed Consent, for trade in pesticides and industrial chemicals which have been banned or severely restricted to augment their existing guidelines for notification and information exchange. The United States was a strong supporter and proponent of these PIC procedures. In summary, the PIC procedures require that countries banning or severely restricting a pesticide for health or environmental reasons (including voluntary withdrawals and refusal to grant first registration when these actions are taken for health or environmental reasons) notify the FAO/UNEP joint program. FAO will manage the procedures for pesticides, while UNEP will manage the program for industrial chemicals. FAO will transmit notice of the pesticide action and the reasons for the action to pesticide importing countries along with information which will assist them in deciding whether or not to continue the importation and use of the pesticide in their country.

Those importing countries which have chosen to participate in this procedure are obligated to advise the international organization as to whether they wish to continue to import and use the pesticide freely, whether they wish no further imports at all, or whether they wish imports to continue under specific conditions (e.g., only specific formulations or only for specific uses). The PIC procedure also provides a mechanism for the importing country to request further information and technical assistance in reaching a determination.

The PIC procedures call for exporting governments, such as the United States, to take appropriate measures, within their authority and legislative competence, designed to ensure that exports do not occur contrary to the decisions of participating importing countries. The United States intends to implement these provisions to the extent possible under its current legislative authority.

With regard to ensuring that the exporting industry complies with the decisions of the importing country, EPA, which fully supports PIC, will need to work with industry, state governments and other sectors of the public to develop monitoring methods for shipments. The Agency is interested in the concept of industry compliance with the PIC program through self-policing. EPA welcomes ideas that the public may have regarding self-auditing techniques for industry, as well as any experiences it may have with monitoring similar export programs.

II. Agency Goals For International Pesticide Activities

EPA has established goals for its international pesticide activities, and will evaluate its policies and activities in relation to those goals. EPA's principal goal is to improve the protection of the public health and the environment from unreasonable adverse effects of pesticides, both in the United States and throughout the world. Secondarily, EPA intends to facilitate international trade, particularly in agricultural commodities, through the harmonization of U.S. and international standards. In pursuing this goal, the Agency will ensure that its harmonization efforts support its efforts to protect public health and the environment. EPA intends to take actions:

1. To protect the American consumer from illegal residues of pesticides on imported food products.

2. To encourage international organizations to adopt standards consistent with those of the United States and to harmonize U.S. approaches with those of other governments.

3. To inform other governments about pesticides and to assist other governments in the development of their own regulatory infrastructure to enable them to protect their public's health and environment.

4. To benefit from the work of other governments' regulatory bodies by receiving and utilizing information on their regulatory actions.

These four areas of activity are discussed in Unit VI of this Notice. In summary, the U.S. government is committed to assisting other countries in the development and implementation of programs to assure safe pesticide use, to ensuring that residues on commodities which are imported into the United States do not exceed acceptable levels and to sharing the information and technical expertise necessary to accomplish these objectives.

III. FIFRA Section 17(a) Policies

A. 1980 Policy Statement

On July 28, 1980 (45 FR 50274), EPA issued, after public review and comment, a Policy Statement which informed pesticide exporters of their obligations with respect to labeling, recordkeeping, and reporting under section 17(a). These obligations are that pesticides, devices, and active ingredients used in producing pesticides which are intended solely for export must be labeled to identify the product and its manufacturer and to provide such instructions as may be necessary to protect persons who come in contact with the product. Certain of the label items must be written in both English and the language of the importing country. If the pesticide is unregistered, the pesticide label must state, "Not Registered for Use in the United States of America."

In addition, exporters of pesticides which are not registered in the United States must obtain a statement from the foreign purchaser, in which the purchaser acknowledges the registration status of the product. Upon receipt of the statement—referred to as the purchaser acknowledgement—from the exporter, EPA must send this statement to an appropriate official of the government of the importing country. EPA requires that the exporter certify to EPA that shipment did not occur prior to the exporter's receipt of the purchaser acknowledgement. When notifying other governments, EPA sends the information through the U.S. embassy in the country of import. The information that the government of the importing country receives includes: the name of the pesticide product and its active ingredient; a brief indication of its regulatory status in the United States; the name and address of the U.S. exporter; and the name and address of the importer. The notice also includes the name and address of an EPA official who can answer questions and provide the government of the importing country with additional information.

Since repeated notices would not necessarily enhance their utility to receiving countries, EPA also determined that submission of a purchaser acknowledgement should only be required on an annual basis for the first shipment by an exporter to a particular purchaser for each importing country. Currently, EPA does not require export notification for those unregistered pesticides which EPA has determined are substantially similar in composition and use to registered products. EPA chose this approach because EPA believed that such notifications would be of little or no use to the receiving country and that such notices might be so numerous that they would lessen the impact of any other notifications dealing with serious health and safety concerns. In addition, this approach reduces the burden of both EPA and the parties receiving the notices.

B. Summary of Proposed Policy Changes

Elsewhere in the **Federal Register** today, EPA is proposing changes to the 1980 Policy Statement. This section summarizes those changes; EPA encourages interested parties to refer to that document for the details of the proposal.

During the summer of 1989, EPA conducted a number of inspections of establishments which produce and export unregistered pesticide products to determine how the current policy was working and what changes needed to be made to better implement section 17. The inspections resulted in useful information in several areas, particularly related to exporter claims that their unregistered products were "substantially similar to registered products in composition and use" and therefore exempt from section 17(a)(2) requirements. EPA found the claim difficult to validate due to lack of supporting documentation. These investigations also showed that many of the exported unregistered products are for research and development purposes, which led EPA to consider this category of products specifically in the review of the current policy.

EPA is proposing to modify or eliminate its existing exemption for the purchaser acknowledgement requirement for products which are identical or substantially similar to currently registered pesticides. If the exemption is retained, EPA is proposing that the burden of substantiating the claim remain with the exporter, and that any similarity claims be supported by documentation. EPA is considering whether such documentation must be maintained in records which are made available to EPA, or its representative, upon request, or submitted in a report to EPA.

Second, EPA determined that additional clarification was needed regarding the applicability of the section 17(a)(1) and 17(a)(2) requirements to research and development pesticide products. The proposed guidance will include specific working definitions concerning the product's intended research use, and a requirement for affirming such intended use by the exporter in order to exempt such research and development pesticides.

Third, EPA is proposing to require purchaser acknowledgement statements be written in English, the language of the purchaser's country, and, if diferent, the language of the destination country, so that the foreign purchasers, and the foreign governments that receive the statements, are more likely to understand their contents and significance. EPA is also proposing that the country of final destination be identified, i.e., the intended country of use, so that the statements are not just directed to the country of persons acting as intermediaries between the exporter and the end users. EPA is also proposing to begin to send notices directly to regulatory officials in these countries. The identification of designated national authorities for the FAO PIC procedure will provide an appropriate recipient for this purpose.

Fourth, EPA is proposing to clarify the applicability of the section 17(a)(1) policy as compared to that of section 17(a)(2). It is EPA's view that the requirements of section 17(a)(1) apply to all exported pesticides, whether or not they fall within the scope of a requirement for the purchaser acknowledgement statement requirements of section 17(a)(2). And fifth, EPA is examining its present policy of requiring annual submissions, rather than submissions on a per shipment basing and is inviting comment on this issue.

EPA is also proposing clarification of the labeling requirements concerning the ingredient statements for unregistered pesticides claiming exemption because of similarity to already registered pesticides. The label for the unregistered pesticide must be as similar as possible to the labels of the registered products, in order to improve comparability of labels on exported pesticides to those of U.S. registered products. To ensure that the foreign purchaser understands its content, EPA is also proposing to require

that certain label statements be multilingual.

IV. FIFRA Section 17(b) Policy

EPA invites comment on a proposed revision to its policy concerning notification of foreign governments of selected regulatory actions affecting the registration of pesticide products in the United States. Such notifications are required by section 17(b) of FIFRA. Since the major objective of this review is to improve the utility of the notification process to recipients, EPA particularly welcomes comments from foreign governments.

A. EPA'S 1975 Notice

EPA has interpreted the section 17(b) requirement to apply to "information having international significance." The criteria to be used in making this interpretation were issued in a **Federal Register** notice in 1975 (40 FR 20987, May 14, 1975). In that notice, EPA indicated that notices to foreign governments would be sent under two conditions:

(1) Whenever the Agency registers, under the authority of section 3, a pesticide that contains any new active ingredient or entails a new use.

(2) When cancellation or suspension of a pesticide becomes effective and is determined to be of international significance.

In the latter instance, EPA indicated that such determinations would be made by applying general guidance on a case-by-case basis.

EPA went on to indicate what type of action would be considered to be of international significance: actions resulting from a review of the pesticide; actions resulting from findings of risk; actions resulting from decisions to reduce or revoke tolerances under the Federal Food, Drug and Cosmetic Act; actions involving issuance of a new policy applicable to the entire pesticide industry; and actions which may have widespread environmental, economic or political implications.

B. Current Practice

Since 1975, EPA has transmitted section 17(b) notices whenever it has taken a significant regulatory action, such as a cancellation or suspension of a registration based on the finding that the pesticide's risks outweigh its benefits. For example, EPA notified foreign governments of the emergency suspension of dinoseb due to the potential for serious reproductive effects among workers exposed. EPA has also issued notices for significant voluntary actions. For example, EPA transmitted a notice concerning the voluntary agreement by the registrant to halt the sale of daminozide (Alar), a plant growth regulator shown to be carcinogenic in laboratory animals.

EPA, thus far, has not transmitted notices for the registration of a new pesticide or new use pattern. EPA has generally limited the notifications to cancellations or suspensions undertaken for health or environmental reasons, and to selected actions which place significant restrictions on a pesticide's use, usually at the conclusion of a Special Review. The section 17(b) notices, as currently designed, describe the regulatory action taken, discuss in general the health or environmental concerns which prompted the action, and offer to provide additional information upon request. The notices are fairly brief, about three pages in length, and are expressed in language that is intended to be easily understood by people who may not be familiar with the U.S. pesticide regulatory program.

Under the current system, EPA's Office of Pesticide Programs prepares a notice, and through the EPA Office of International Activities, sends it to the Department of State for transmittal to other governments. The State Department transmits a cable to all diplomatic posts, directing the embassy to inform the host government of the information in the cable. The embassy then contacts an appropriate government office in the host country and informs the office of the information contained in the cable. Each embassy may handle the notification differently, depending upon individual circumstances. Some notify the Environment Ministry, some inform the Agricultural Ministry, while others may inform the Foreign Ministry which then in turn is expected to inform the pesticide regulatory body. Some embassies may simply provide a copy of the cable, some may set up a meeting to discuss the notice, while others may prepare a formal diplomatic communique to transmit the information.

EPA has determined that revisions to its international notification system are warranted, based on a comprehensive review of the system's effectiveness. The development of a final policy will benefit greatly from public comment on several key areas: the scope of the international transmittals; the frequency of transmittal and content of the notifications; and the transmittal process itself. Each is discussed elsewhere in this **Federal Register**, together with the options considered and the proposed revisions.

C. Scope of Notification

1. *Types of Regulatory Decisions.* Every year EPA takes a large number of different types of regulatory actions affecting pesticide products. These actions encompass both routine, non-controversial decisions, as well as regulatory actions that involve highly contentious issues and those which address serious concerns about public health and environmental risks. Listed below are the actions on pesticide products which could be subject to the section 17(b) notification requirement, as well as actions that are not covered by section 17(b) but may be of international interest.

a. Cancellations and Suspensions:

1. Final suspensions/cancellations as a result of the potential to cause unreasonable adverse effects (sections 6(b) and 6(c)).

2. Proposed suspensions/cancellations (sections 6(b) and 6(c)).

3. Final cancellation for failure of a registrant to meet conditions imposed at the time of registration, usually the submission of certain required data (section 6(e)).

4. Voluntary cancellations (section 6(f)).

5. Voluntary withdrawls.

6. Cancellations for failure to pay the fees required to reregister a pesticide or maintain a registration (section 4).

7. Cancellations resulting from other reregistration activity under section 4.

8. Suspensions for failure to submit data required by EPA after initial registration (section 3(c)(2)(B)).

9. Suspensions for failure to pay the fees required to reregister a pesticide or maintain a registration (section 4).

b. Registrations and Denial Decisions:

1. Registrations of the first use of an active ingredient (new chemicals).

2. First food use registrations of an active ingredient.

3. First registrations of other significant new uses of an active ingredient (e.g., first indoor use, first aquatic use, etc.).

4. Registrations or amendments to registration involving uses similar to already registered uses of an active ingredient (known as me-too registrations).

5. Registration of pesticides which are substitutes for cancelled or suspended products.

6. Denial of registration for health or environmental safety reasons.

c. Tolerances actions:

1. Establishment of a new tolerance.

2. Exemption from a tolerance.

3. Revocation of an old tolerance.

4. Change in tolerance.

d. Reregistrations Decisions (concerning status of existing pesticides and uses):

1. Reregistration—issuance of a reregistration document outlining the conditions a registrant must meet in order to reregister a pesticide product.

2. Other reregistration decisions making health or environmental findings.

Read literally, section 17(b) could require thousands of notifications annually—every time EPA amended a registration, cancelled a registration for failure to pay maintenance fees, or cancelled a registration at the request of a registrant. In the 1975 Notice, EPA noted that the legislative history of section 17(b) indicates that notices should serve some useful purpose. EPA went on to conclude that it would not serve a useful purpose to transmit notices for all of the actions which could fall within the scope of the requirement and, in fact, that notification of routine actions would likely lessen the impact of information having international significance. This interpretation has guided EPA in its decisions to transmit notices.

2. *Factors.* While agreeing that expansion of the notification system is appropriate, a number of factors must be considered when determining which regulatory actions should be subject to the notification requirement, and in determining in which manner the information should be transmitted. Among the factors to be considered are: EPA's legislative requirements; EPA's policy goals for international pesticide activities; the need for consistency with international activities; the value of the information to the recipient; and competing demands on EPA's and other agencies' resources.

a. *Legislative mandate.* Section 17(b) specifies that, "Whenever a registration or a cancellation or suspension of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department, notification * * *." EPA believes that the language of this requirement may be interpreted in a number of ways, especially when read with the intent of Congress to provide meaningful information to other countries (S. Rep. No. 92-1540, 92d Cong. 2d Sess. at 33 (1972)). EPA has determined that it is appropriate to limit section 17(b) notifications to those that will be of benefit to the recipient countries.

b. *Goals of EPA.* As part of its international activities program, the section 17(b) notification system should further EPA's international goals. Thus, the scope of the notification system must cover actions which may have an effect on the safety of the American food supply as well as on the potential effects of a pesticide's use in a foreign country. If the United States informs other governments about pesticides it has regulated or about the establishment of new tolerances, those governments may use that information to ensure that food exported to the United States complies with U.S. regulations.

c. *Consistency with international activities.* Although the implementation details of the PIC procedure are not yet resolved, it appears that the following types of U.S. actions will require PIC notification:

1. Final suspensions/cancellations for health or environmental reasons (sections 6(b) and 6(c)).

2. Voluntary cancellations for health or environmental reasons (section 6(f)).

3. Refusal or denial of registration for health or environmental reasons (section 3(c)(6)).

FAO is continuing to define the specifics of the system's implementation. Specifically, working with UNEP's International Registry for Potentially Toxic Chemicals (IRPTC), FAO is developing PIC decision guidance documents, an initial list of pesticides to be included in the systems, and the guidelines for selecting actions on pesticides which are appropriate for inclusion in the PIC procedure. EPA will take this information into account in the development of its new export policy and procedures discussed here and elsewhere in the **Federal Register** notice for section 17(a).

d. *Value to recipient.* Clearly, messages about U.S. actions on pesticides should be of use to the recipient. Section 17(b) notices should be as informative as possible and relay summaries of regulatory actions of concern to other countries. EPA now has reason to believe that other governments are interested in many regulatory actions for which EPA has not issued notices in the past, actions which would not necessarily be deemed to be of "international significance." At numerous international meetings and in correspondence with EPA, representatives of other governments have expressed an interest in obtaining more information about EPA activities. They have indicated that they need to know more about the U.S. pesticide regulatory process to aid in making decisions about the application of pesticides and to develop or enhance their own regulatory programs.

The section 17(b) notification system, however, is neither the only nor always the most appropriate means of conveying information about the U.S. pesticide program to other countries. EPA considers that its involvement in technical assistance and training activities with other governments have been of great benefit and that its notification system should complement these activities. EPA must determine what kinds of information will be conveyed most effectively through the section 17(b) notification system versus other means of providing information.

e. *Agency resources.* EPA must also consider the most effective way to achieve its goals of protecting the health and safety of people and the environment world-wide within the context of its existing resources and those of other agencies involved in these activities. Any expansion of notification activities will entail additional resources, and may lessen the resources available for domestic regulatory programs or other international pesticide activities.

However, expansion of the notification program could also enhance other EPA international education and training programs (described in Unit VI of this notice) and make overall resource expenditure more effective. For example, if EPA were to transmit notices regarding tolerances to food and feed exporting nations, it could help improve the record of compliance with U.S. tolerances on food products exported to the United States. Further, as EPA forwards information about pesticides which have been removed from the U.S. pesticide market for health or environmental reasons, EPA's efforts to promote the safe use of pesticides are enhanced. In sum, EPA wishes to distribute the resources available for pesticide export related activities so as to provide foreign countries with sufficient and prompt notification of important U.S. regulatory actions without compromising EPA's ability to conduct supplemental technical assistance and training programs.

3. *Options.* The options for issuing section 17(b) notices range from maintaining the status quo, to issuing notices for a larger number of selected regulatory actions, to issuing notices for all regulatory actions.

a. *Notices selected and issued using current case-by-case approach.* EPA has issued section 17(b) notices on major regulatory actions whenever EPA has considered it to be important to international welfare. Other governments have informed EPA that the notices currently transmitted on suspensions and cancellations are very useful for decision-making and are appreciated. The international community has also indicated, however, that they would be interested in

receiving these notices more often. Although this expression may indicate a misperception that EPA suspends or cancels pesticides for health or safety reasons more often than it does, it is clear that many governments are interested in more routine information about U.S pesticide actions than the current system provides.

Notification of suspensions and cancellations on a case-by-case basis has been adequate only for informing the world of the most significant pesticide regulatory decisions that EPA has made. EPA believes that a broader and more consistent notification system will do more to aid foreign countries in using pesticides safely and in complying with U.S. pesticide regulations when exporting foods to the United States.

b. *Notices for selected subset of regulatory actions.* EPA's assessment of its own and other international notification systems indicates that the international community is primarily interested in receiving notices of actions taken because of health or environmental concerns. In light of EPA's goal of providing technical assistance and training to other countries so that they may develop or improve their own pesticide regulatory programs, EPA sees merit in expanding its notification system to cover all actions taken for health or environmental safety reasons and major actions which affect the availability of a pesticide active ingredient or affect FFDCA tolerances and, thus, pesticide use. Such an expansion would broaden the scope of the system to cover all actions thought to be of interest to the international community, and is consistent with EPA's international goals. Routine, administrative actions of little interest to other countries, such as minor changes in registrations or cancellations for failure to meet reregistration requirements (e.g., fees or submissions of data), would not require international notices, but could certainly be transmitted when EPA believed it to be of interest, or made available upon request.

c. *Notices for all regulatory actions.* While it is clear from the discussions EPA has had with other governments that more information would be considered helpful, EPA believes that it must use some discretion in sending notices world-wide. The effect of sending notices for every single action EPA takes may be to confuse or overwhelm other countries with information that may not always be relevant to the use or regulation of pesticides in these countries. For instance, individual notices about the recent cancellations of about 15,000 registrations resulting only from the failure to pay the new registration maintenance fee would probably not be of international interest or utility. Similarly, a notice concerning the registration of a use pattern which is similar to one already registered is not critical information.

Further, as noted previously, sending notices for every action would mean preparing and transmitting thousands of notices annually, an enormous and impractical use of resources. EPA believes that expanding the notification system to cover virtually all pesticide actions is neither a realistic nor an effective option. Other governments have also indicated that they are not interested in learning about EPA's decisions to approve minor registration changes.

d. *Notices required under international procedures.* The international PIC notification procedures specifically call for notification on: pesticides which are banned or severely restricted for health or environmental reasons by final government actions, including refusals to register and voluntary withdrawals for health or environmental reasons. This limited set of actions was selected by members of international organizations because of an overriding interest in health and environmental risks and to prevent overloading the transmittal system with information of minor value. EPA agrees that too much information would not be of value, and could detract from the importance of notices about health or environmental risks. However, it appears that governments are also interested in many U.S. regulatory activities beyond the scope of the international system, and EPA interprets section 17(b) as permitting notice of certain actions that would not be covered by the internationally agreed procedures.

4. *Proposal.* The subset of regulatory actions subject to international transmittal should include all actions taken on the basis of health and environmental criteria so that foreign countries receive adequate information about pesticide risks. Countries should also be notified of all major actions which affect pesticide use, including actions which eliminate all registrations for an active ingredient or substantially change a pesticide tolerance. It is important for countries to be notified of these actions because removal of an active ingredient from the U.S. market or tolerance revocations may mean that other countries will no longer wish to use the pesticide or that they will no longer be able to export, to the United States, foods that have been treated with certain active ingredient. Further, foreign countries need to be made aware that active ingredients that have lost their U.S. registration will not go through EPA's reregistration review and thus, EPA will not be conducting any new health or environmental reviews of the pesticide.

International notification is not needed for those actions which are of an administrative or routine nature and not associated with significant health or environmental risks. Therefore, EPA is proposing that section 17(b) type notices should be transmitted to other governments on the actions listed below. EPA welcomes comments on this proposal.

a. Section 17(b) type notices should be transmitted for:

1. Final suspensions/cancellations as a result of the potential to cause unreasonable adverse effects (sections 6(b) and 6(c)).

2. Proposed suspensions/cancellations (sections 6(b) and 6(c)).

3. Denial of a tolerance following a formal finding that risks outweigh the benefits.

4. Denial of an application to register a product following a formal finding that the risks outweigh the benefits.

5. Voluntary cancellations made for health or environmental reasons (section 6(f)).

6. Voluntary withdrawals made for health or environmental reasons.

7. Reregistration actions—issuance of a reregistration decision document (section 4(g)(2)).

8. The establishment of a new tolerance or an exemption from a tolerance, revocation of a tolerance or exemption, or amendment of a tolerance.

9. All registrations of a new active ingredient and (if different) the first food use registration of an active ingredient.

10. All other actions which eliminate all or virtually all registrations for an active ingredient including:

i. Final cancellations for failure of a registrant to meet conditions of registration.

ii. Voluntary cancellations.

iii. Cancellations for failure to pay the fee required to reregister or maintain registration of a pesticide.

iv. Cancellations resulting from other activity under FIFRA section 4.

b. No section 17(b) Notices would be prepared on a routine basis for:

1. Registrations of each significant new use of a pesticide.

2. Registrations of uses similar to existing registered uses (known as me-too registrations).

3. Suspensions for failure to submit data under FIFRA section 3(c)(2)(B) unless they result in the elimination of all or virtually all uses of an active ingredient.

4. Cancellations/Suspensions that do not result in elimination of the registration of all or virtually all uses of the active ingredient or are not taken for health and environmental reasons (e.g. voluntary cancellation of a product by a company because of insufficient funds or unwillingness to meet data requirements for reregistration).

D. Timing And Frequency

The timing of a section 17(b) notice should depend on the potential effect of the action taken. Actions based on health or environmental risks or other considerations vary in their degree of significance. An international announcement of the emergency suspension of a pesticide should obviously be transmitted as soon as possible, preferably at the same time the annouhcement is made domestically. Actions of lesser significance such as the establishment of new tolerances, exemptions or changes in tolerances or exemptions, which happen quite frequently, could be transmitted at a later time, or even consolidated into periodic summaries.

Currently, EPA sends notices of control actions within a few weeks of the domestic announcement of the regulatory action. The notice is sent once, and never repeated. EPA's current practice is not entirely consistent with notification procedures adopted by international organizations. These procedures recommend that notices of control actions be retransmitted or at least referenced in export notices.

1. *Options.* Options for the timing and frequency of transmittal of international notices include:

a. To send a notice soon after an action is taken for every action that meets EPA's international notification criteria, and never repeat them.

b. To send notices dealing with urgent health and environmental concerns immediately and prepare an annual report that repeats these notices and lists all the less urgent actions taken during the year that meet EPA's international notification criteria.

c. *Transmit all notices as soon as possible after an action is taken.* Given the expansion of the notification system that EPA is proposing, it would be impractical and unnecessary to forward an individual notice immediately after an action was taken for every action that meets EPA's proposed notification criteria. All of the additional notices EPA plans to send would make this approach too burdensome and would not result in great benefit to the recipients.

d. *Transmit notices on major health and environmental actions immediately; compile and transmit notices for all actions annually; and include copies of notices with all transmittals of purchaser acknowledgement statements for pesticides banned in the United States.* As previously indicated, those notices of actions about pesticides which pose great potential for health or environmental harm should be transmitted as quickly as possible, ideally at the same time announcements are made domestically. Other notices, which are of interest but which do not require immediate attention, should be compiled and sent annually. Preparing an annual report on all actions, both major and minor, would conserve EPA resources (compared with issuance of a separate notice immediately after each action), would give recipients a more comprehensive view of U.S. pesticide actions, and would likely be more effective in that it would reserve immediate transmission for those actions which carry the highest risk implications. Including copies of these notices along with purchaser acknowledgement statements for banned pesticides would ensure that those purchasing the U.S. banned pesticides would have information on the basis of the U.S. action.

2. *Proposal.* EPA believes that in light of the proposed expansion of the section 17(b) notification system, the best option for the timing and frequency of transmission of notices is to transmit as quickly as possible notices for major actions based on health or environmental considerations, and then repeat them at the end of the year. A compilation of all actions determined as warranting notice should be transmitted annually. Notices should also be included with purchaser acknowledgement statements of banned pesticides. The types of notices subject to transmittal, and the timing of the notice are listed below.

a. Transmit notice as soon as possible after the action is taken for:

1. Final suspensions/cancellations as a result of the potential to cause unreasonable adverse effects (sections 6(b) and 6(c)).

2. Proposed suspensions/cancellations (sections 6(b) and 6(c)).

3. Denial of a tolerance following a formal finding that risks outweigh the benefits.

4. Denial of an application to register a product following a formal finding that the risks outweigh the benefits.

5. Voluntary cancellations made for health or environmental reasons (section 6(f)).

6. Voluntary withdrawals made for health or environmental reasons.

These actions would also be repeated in the annual compilation and for cancelled pesticides, notices would be forwarded with purchaser acknowledgement statements required under section 17(a).

b. Transmit an annual notice for:

1. Reregistration actions—issuance of a reregistration decision document (section 4(g)(2)).

2. The establishment of a new toleranceor an exemption from a tolerance, revocation of a tolerance or exemption, or amendment of a tolerance.

3. All registrations of a new active ingredient and (if different) the first food use registration of an active ingredient.

4. All other actions which eliminate all or virtually all registrations for an active ingredient including:

i. Final cancellations for failure of a registrant to meet conditions of registration.

ii. Voluntary cancellations.

iii. Cancellations for failure to pay the fee required to reregister or maintain registration of a pesticide.

iv. Cancellations resulting from other activity under FIFRA section 4.

E. Content of Notices

Current notices include a summary of the action taken, the health or environmental reasons prompting the action, the legislative and regulatory background for the action, and the concerns prompting the action. They conclude by offering additional information upon request, generally in the form of a Technical Support Document or a Fact Sheet.

EPA believes that while, generally, the content of the current notices is adequate for major actions taken for health or environmental reasons, these notices could be improved. Responses from other governments to EPA's notices have been mixed. Some governments have indicated that the notices are helpful, while others have indicated that the notices are hard to understand. EPA is seeking public comment on the kinds of information which should be included in the notices and the appropriate format, particularly for the annual notice that will include listings of actions taken during a calendar year. EPA intends to comply with recommendations for formats made by international

organizations when revising the EPA notices.

F. Transmittal Process

As described previously, the Department of State, through its embassies in other countries, is currently responsible for sending section 17(b) notices to foreign governments. In practice, this has proved to be a time consuming and somewhat ineffective process. All of the cables that the State Department transmits must be ordered in terms of priority, and information about domestic regulatory actions is usually of a lower priority than diplomatic activities. Further, embassies often lack sufficient staff to forward the notices quickly and to the appropriate government officials in the receiving countries. This process often delays receipt by foreign governments of information about U.S. pesticide regulatory actions.

EPA and the State Department believe that the transmittal process would be improved if the notices were transmitted directly from EPA to other governments. Therefore, the State Department has agreed that EPA should transmit notices directly while keeping the Department informed about such communications. EPA will provide the Department with copies of the notices. This agreement meets the Congressional intent of communicating with other governments while not overburdening formal diplomatic channels with technical information.

EPA plans to forward certain notices to FAO, in accordance with the PIC procedures. Further, some notices will be sent to countries both from the United States and from FAO. As a result such procedures will provide greater assurance that the notices will be received by appropriate officials. EPA welcomes comments on its plan to transmit notices directly, with copies forwarded to the State Department.

V. Confidentiality

A. Background

In conjunction with its effort to strengthen compliance with requirements of section 17(a), EPA is reviewing its policy concerning confidential treatment of information reported in foreign purchaser acknowledgement statements.

The proposed policy statement on section 17(a) published elsewhere in today's Federal Register indicates that the following information would be included in purchaser acknowledgement statements submitted to EPA:

1. Name and address of the exporter.
2. Name and address of the foreign purchaser.
3. Name of the product and the active ingredient.
4. Statement that indicates that the foreign purchaser understands that the product is not registered for use in the United States and cannot be sold in the United States.
5. Country of final destination of the export shipment, i.e., where the exported pesticide is intended to be used, if different from the foreign purchaser's address.
6. Signature of the foreign purchaser.
7. Date of the foreign purchaser's signature.

In the past, EPA has treated information submitted in purchaser acknowledgement statements as confidential within the meaning of its regulations on business confidentiality at 40 CFR part 2, subpart B, when such information has been claimed as confidential by the exporter.

The proposed policy statement on section 17(a) clarifies that certain information contained in purchaser acknowledgement statements will not be entitled to confidential treatment. Specifically, the fact that an exporter has submitted a notice of export under section 17(a) for a given pesticide is a matter of public record and will not be granted confidentiality. This is based on the disclosure requirements of section 7 of FIFRA, as explained in EPA's Federal Register notice of January 12, 1990 (FR). Also, active ingredients of such exported pesticides are public information in accordance with the labeling requirements of section 17(a). Therefore, Units V.A. 1 and 3 of this notice will not be considered confidential.

B. Proposal

EPA is proposing to issue a class determination under 40 CFR 2.207 concerning the confidentiality of country of final destination as reported on purchaser acknowledgement statements. Under its regulations on business confidentiality, EPA may issue a class determination where information is of a similar nature and can therefore be treated similarly for all submittals. Some exporters have claimed destination country as confidential when submitting the required acknowledgement statement. They have substantiated their claims by asserting that disclosure of such information concerning their international markets would adversely affect their position by providing competitive advantage to other pesticide exporters.

EPA's research and inquiries, however, suggest that destination information on unregistered pesticides is already a matter of public record. Some countries, for example, publish lists identifying monthly pesticide imports, including information on the name or type of pesticide, the exporting country and the exporting company. Other countries make such information available on request.

Also widely available is information on international markets for particular pesticides. There is widespread advertising by United States exporters on billboards and in stores in foreign countries for pesticides sold in those countries but not registered in the United States. Similar advertising appears in domestic and foreign publications. There also exist compilations for pesticides and their regulatory status throughout the world, such as a volume published jointly by the Agricultural Requisites Scheme for Asia and the Pacific and the International Co-operation Centre for Agricultural Research and Development.

In addition, considerable information on pesticide exports is available from private publishers at a cost which is high but not prohibitively so for pesticide manufacturers. For example, Battelle publishes "World Pesticide Programme" reports which provide detailed information on pesticide use in foreign countries. "Agrow World Crop Protection News" offers market planning and development information and lists pesticides registered in various countries.

Finally, the Port Import/Export Reporting Service (PIERS) database of the Journal of Commerce provides extensive information on all pesticide shipments leaving the United States. Information available to customers of PIERS includes commodity exported, manufacturer or shipper, destination and quantity. (Manufacturer or shipper name is sometimes deleted but can usually be discerned from the other information reported.) Based on the foregoing, EPA believes that destination information on unregistered pesticides generally is not maintained in confidence and is in fact publicly available. Further, markets for particular pesticides in foreign countries appear to be widely known. Therefore, disclosure of country of final destination as reported under section 17(a) would not seem likely to cause substantial competitive harm to the exporter.

EPA requests public comment on its proposal to issue a class determination which would find that country of final destination in foreign purchaser acknowledgement statements under section 17(a) is not entitled to

confidential treatment. EPA also requests comment on whether a similar determination should be made for information identifying the foreign purchaser.

VI. FIFRA Section 17(d) Activities

Although FIFRA section 17(d) does not mandate any specific regulatory program, EPA relies on it as the statutory authority for its international activities. This is consistent with the legislative history of this paragraph which indicates a strong Congressional desire for EPA to participate in international efforts to develop improved pesticide research and regulations. (S. Rep. No. 92–838, 92nd Cong. 2nd Sess. at 28 (1972)., H.Rep. No. 92–511, 92nd Cong. 1st Sess. at 27 (1971)). In addition, this section provides authority to support the U.S. participation in activities to develop infrastructure and provide technical assistance to pesticide importing developing countries as well as those countries which use pesticides and export agricultural commodities to the United States.

EPA has undertaken a number of technical assistance activities under section 17(d) of FIFRA which are designed to achieve the goals and objectives of EPA's international pesticide activities: to protect the quality of imported food; to harmonize U.S. and international standards; to support environmental protection in other countries; and to obtain information from other countries useful to the domestic regulatory program. This section will describe the activities in which EPA is engaged in the context of how they address these policy objectives.

1. *Protecting the quality of imported food.* The most direct way in which the use of pesticides in other countries can affect the United States is by the presence of such pesticides on food imported into the United States. EPA seeks to ensure that food coming from other countries does not pose risks to the American consumer. At the same time, EPA also seeks to ensure that foreign agricultural producers and exporters do not have an unfair advantage over U.S. farmers by using pesticides the United States has decided to prohibit for dietary health reasons. Pesticide tolerances apply to all crops in commerce in the United States, regardless of their origin. While FDA and USDA are responsible for monitoring the compliance of imported foods with U.S. tolerances, EPA promotes food safety by actively participating in international organizations which develop food safety standards, such as the WHO/FAO Codex Alimentarius Commission.

Additionally, EPA has held numerous workshops for regulatory officials and agricultural exporters to ensure that other countries are aware of the U.S. requirements for tolerances. Countries which export foods to the United States need to take into consideration the U.S. tolerances when approving uses of specific pesticides within their countries. Thus far, the Agency has planned or attended sessions with growers from Mexico, Guatemala, the Caribbean countries, Chile, China, and Malaysia, and plans to speak this year to growers in the countries comprising the southern portion of South America. These sessions not only provide EPA the opportunity to inform others about U.S. pesticide regulations, but also allow the Agency to learn more about the work of other governments' regulatory practices, thereby enhancing our ability to ensure the accepatability of imported foods.

EPA intends to continue to provide direct assistance on an as-needed basis—as resources permit—and considers this practice to be an integral part of the Agency's international activities.

2. *Harmonizing U.S. and international standards.* EPA recognizes that protecting the global environment and the public health of all peoples must be a truly cooperative international effort. Through participation in the activities of international organizations, EPA promotes the development of methods and standards that are consistent with its own, and which at the same time meet the objectives of the international community. In addition, encouraging the development of sophisticated, effective environmental protection world-wide, harmonious regulatory requirements minimize unnecessary disruptions in international trade.

EPA assisted in achieving international adoption of the goals and principles of FAO's International Code of Conduct on the Distribution and Use of Pesticides. The Code establishes standards to encourage responsible international trade practices; to assist developing countries in the regulation of pesticides; to promote the safe handling and use of pesticides; and to minimize adverse effects on public health and the environment.

In the future, EPA will participate in an international meeting in 1990 in Beijing, China, on international harmonization of pesticide tolerance levels. Additionally, analysis is underway in the Agency to consider the harmonization of U.S. tolerances with those of the Codex Alimentarius Commission, and to determine the potential impact of recent harmonization discussions in the revisions to the General Agreement on Tariffs and Trade.

3. *Supporting environmental protection in foreign countries.* EPA's efforts to assist in the protection of public health and the enviroment in foreign nations follow two tracks. First, EPA provides information through the notification programs mandated by section 17 of FIFRA. These notification systems, however, have their limitations. As they were never intended to supplant a regulatory system in the importing country, only to supplement one, countries having no or minimal regulatory programs will not find the information as useful as those having more rigorous programs. Moreover, purchaser acknowledgements are transmitted under FIFRA section 17(a)(2) upon the first shipment to a foreign purchaser in a year, and often do not precede the actual shipment. Therefore, an importing country cannot rely on export notices to make a judgement about volume of shipments, nor do notices give the importing government the opportunity to prohibit shipment. Further, they report a transaction on a chemical from only one country (the United States), when other countries may be supplying the same product without comparable notification. Finally, the purchaser acknowledgement statements are not required to be sent for pesticides which are registered in the United States, although such pesticides may be substantially restricted in the United States.

EPA believes that it should help to ensure that information sent to other countries under section 17 is not only received but is usable and useful to those countries. Thus, EPA supports the development of decision-making capabilities and regulatory infrastructures in importing countries for pesticides. In 1988 and 1989, EPA co-sponsored workshops which were conducted for the Asia/Pacific Region in Bangkok, Thailand and Manila, Philippines. EPA also provided resource persons for FAO sponsored national workshops in China and Belize, a Pacific Island workshop in Noumea, New Caledonia, an African regional workshop in Ghana and a food safety workshop in China. In January 1990, a workshop for Latin American regulatory officials is scheduled to be held in Santiago, Chile, as well as another African regional workshop in Niger, sponsored by the U.S. Agency for International Development (AID). EPA

has also cooperated with international organizations such as FAO, WHO, the Pan-American Health Organization, the Asian Development Bank, the World Bank and bilateral agencies such as the AID, and the German Technical Assistance Agency to provide this training and assistance.

EPA also provides expertise through representation to expert meetings and on official delegations to UNEP, FAO, and WHO. Agency personnel have been assigned to the WHO's International Programme on Chemical Safety and to FAO to help develop summary documents and guidelines on pesticides for use by developing countries in their regulatory programs. In addition, EPA supports efforts such as FAO's implementation of PIC by providing resources and expert guidance.

In some cases, EPA provides technical assistance by "loaning" technical personnel for on-site consultation. For instance, EPA has assisted in the development of an environmentally sound control strategy for the locust plague in Africa. Further, EPA has entered into agreements with AID and the Peace Corps to provide expertise in the evaluation of the environmental impact of pest control strategies, the disposal of pesticides, the development of guidelines for the procurement of pesticides, and other related projects. As with the educational programs undertaken by EPA, these projects enable countries to improve the protection of their citizens and environment while obtaining the benefits of pesticide use.

EPA also hosts numerous international visitors who are trained in a variety of areas, such as: regulatory development, data evaluation, decision methods and procedures for pesticide regulation.

4. *Obtaining information from other countries.* EPA considers information exchange among countries to be an efficient use of resources. In receiving information about regulatory actions taken by the United States, EPA hopes that other countries will use the information and benefit from our experiences. Similarly, the United States is very interested in receiving information about regulatory activities underway in other countries, to improve the comprehensiveness of its regulatory review. For example, the United States has regular meetings with Canada and the United Kingdom, known as the "tripartite discussions" for the purpose of exchanging information on current regulatory activities. The United States has found these discussions to be very useful. In the context of the Organization for Economic Cooperation and Development, the United States participated in technical level meetings on tributylins which were instrumental in the development of its testing protocal, since other member governments were further along in their regulation of these compounds.

In summary, within the context of its existing resources, EPA has initiated a technical assistance and information service program to help foreign countries, in particular developing countries, establish scientifically-based, comprehensive pesticide regulatory programs. Adequate regulatory programs are needed to ensure that pesticides are used safely and that pesticide residue levels in food do not reach harmful levels. EPA believes that establishing successful regulatory programs in other countries will minimize the number of violations occurring in imported food. In addition, by sharing technical and regulatory information with foreign governments, EPA hopes to facilitate the harmonization of international standards which would diminish existing trade barriers.

Authority: 7 U.S.C. 136o.

Dated: February 2, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90-3249 Filed 2-8-90; 8:45 am]

BILLING CODE 6560-50-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 153, 155, 156, 157, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173 and 180

[OPP-170000; FRL 3665-2]

Statement of Policy on the Labeling Requirements for Pesticides, Devices, and Pesticide Active Ingredients Intended for Export and Procedures for Exporting Unregistered Pesticides: Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement.

SUMMARY: In a policy statement issued on July 28, 1980, EPA explained in detail the requirements of section 17(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, the policy informed the public of the scope of the section 17(a)(1) labeling requirements, the procedures that exporters of unregistered pesticides must follow, and the unregistered products for which the exporter would be required to comply with the purchaser acknowledgement statement requirement of section 17(a)(2).

EPA believes that changes are necessary to ensure compliance with the requirements of FIFRA regarding the use of pesticides and their effect on human health and the environment. Therefore, with this notice, EPA is proposing to clarify the labeling requirements for exported pesticides, devices, and pesticide active ingredients, and is proposing to amend EPA's policy regarding the procedures for exporting unregistered pesticides.

DATES: Comments must be received by EPA on or before May 14, 1990.

ADDRESSES: Submit written comments, identified by the document control number (OPP-170000), by mail to: Public Information Branch, Field Operations Division, Office of Pesticide Programs (H7506-C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Public Docket, 244 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. All written comments will be available for public inspection in the Public Docket at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, Office of Compliance Monitoring (EN-342), Rm. E-709B, 401 M St., SW., Washington, DC 20460, telephone (202) 382-7825.

SUPPLEMENTARY INFORMATION: Section 17(a) of FIFRA was amended in 1978, and after accepting public comment, EPA published a policy statement for section 17(a) in the Federal Register on July 28, 1980 (45 FR 50274). The 1980 policy statement explained what labeling is required to appear on exported pesticides, devices, and pesticide active ingredients, and what procedures an exporter of unregistered pesticides must follow to submit a statement from a foreign purchaser acknowledging that the purchaser is aware that the pesticide is unregistered for use in the United States and cannot be sold in the United States. EPA required a purchaser acknowledgement statement if the product: (a) Contained an active ingredient not found in a federally registered product; (b) bore labeling for a use which is currently subject to denial or cancellation of registration; or (c) was not similar in composition and use pattern to a federally registered product.

There has been increasing interest by foreign governments regarding the import of pesticides and their effect on human health and the environment in

their countries. There are currently efforts underway at the international level to assist governments in making informed decisions concerning pesticide use in their countries. EPA believes that the notification of foreign governments through the section 17(a)(2) submittal requirement of a purchaser acknowledgement statement is an important element in such decision-making by foreign governments. In addition, there is concern that pesticides which may have known or suspected adverse health effects, or which have not been tested at all, may be used on agricultural products which are then imported into the United States. There have been incidents where imported agricultural products tested for pesticide residues by the U.S. Department of Agriculture and the U.S. Food and Drug Administration were found to be contaminated with pesticides in excess of established legal limits, including pesticides which are banned for use in this country.

On April 25, 1989, the General Accounting Office (GAO) issued a report entitled "Pesticides: Export of Unregistered Pesticides is Not Adequately Monitored by EPA" (GAO/RCED89-128). This report identified several areas of concern regarding EPA's enforcement of the requirements of FIFRA section 17(a). Specifically, the GAO report identified problems in EPA's compliance monitoring program for FIFRA section 17(a), and suggested that the purchaser acknowledgement statement does not provide adequate transfer of useful information to both the importing country and EPA. In addition, GAO criticized the present policy's exemption from the section 17(a)(2) requirement of unregistered pesticides similar in composition and use to registered products because the exempt status of products is difficult to verify. Finally, GAO suggested that a number of pesticide exporters may not have been complying with the requirements of section 17(a).

The concerns presented in the GAO report were reiterated in a May 5, 1989 hearing before the House of Representatives Subcommittee on Environment, Energy, and Natural Resources, Committee on Government Operations, in which EPA was requested to reevaluate the current export policy program. In light of the issues raised by the Subcommittee, the GAO report, and the public, EPA conducted a comprehensive review of its pesticide export program, reevaluating the 1980 policy statement and its export enforcement programs. As part of this effort, EPA undertook an inspection program during the summer of 1989 to evaluate compliance with the labeling requirements and submissions of acknowledgement statements. A preliminary review of the inspections conducted indicates a need for enhanced enforcement in this area and for the revisions in this proposed policy statement.

In addition, as a part of its comprehensive pesticide export policy review, EPA examined its polices and procedures concerning: (1) The notification of foreign governments of significant actions taken on pesticide registrations under FIFRA section 17(b); (2) compliance with prior informed consent (PIC) programs adopted through the United Nations; (3) cooperation in international efforts to improve pesticide research and regulations under FIFRA section 17(d); (4) providing technical assistance to countries importing pesticides and exporting food to the United States; and (5) confidential treatment of information concerning pesticide exports. EPA's review regarding these matters is discussed in the Proposed Pesticide Export Policy Statement published elsewhere in this issue of the **Federal Register**.

To ensure that there is a full understanding of the proposed policy statement for section 17(a), the policy presented in this document includes those portions which are being continued from the 1980 policy statement. The changes being proposed to the 1980 policy statement and the options under consideration, are explained in Unit I of this document. Explanations for the unchanged portions of the policy which are restated in Units III, IV and V of this document, may be found in the 1980 policy statement at 45 FR 50274 (July 28, 1980).

EPA is interested in receiving the comments from the public and other governments on the proposed policy presented in this document, particularly on the proposed changes in the policy involving the acknowledgement statement requirement. EPA seeks comment specifically on: (1) Whether removing the similar in composition and use exemption would significantly increase the number of exporters required to obtain the purchaser acknowledgement statement and thus increase respondent burden; (2) whether or not such notices would serve a useful purpose to importing countries; and (3) the alternative requirements presented, if the exemption were maintained.

Accordingly, EPA proposes the following policy with regard to the requirements for pesticides, devices, and active ingredients used in producing pesticides intended solely for export.

I. Proposed Revisions to the 1980 Policy

Generally, FIFRA section 17(a) describes two requirements: section 17(a)(1) describes the requirements on the exported product, including labeling, and section 17(a)(2) describes the requirement for obtaining a foreign purchaser acknowledgement statement for the export of an unregistered pesticide. Section 17(a)(1) requires that pesticides, devices, and active ingredients used in producing pesticides which are intended solely for export comply with certain labeling provisions of FIFRA section 2, the establishment registration procedures and reporting requirements of section 7, as described in 40 CFR part 167, and the inspection and recordkeeping requirements of section 8, as described in the statute and 40 CFR part 169.

A. Applicability

The most important modification EPA is considering relates to the administrative exemption to section 17(a)(2) provided in the 1980 policy statement for exported unregistered pesticides that are substantially similar in composition and use to registered pesticides. EPA is considering either: eliminating the exemption entirely, requiring any person who exports an unregistered pesticide to obtain a purchaser acknowledgement statement and submit it to EPA; or maintaining the exemption, but requiring exporters to substantiate claims that exported products are substantially similar in records maintained and made available to EPA, or its representative, upon request, or in reports submitted directly to EPA.

In addition, although EPA addressed the applicability of section 17(a) to research products in the discussion of comments section of its 1980 policy statement, EPA believes that the policy regarding such products should be clarified. EPA is proposing that, for the purposes of this policy, section 17(a)(2) not apply to research products, and will provide specific guidance as to what is and is not considered to be a research product. EPA believes that such products should not require purchaser acknowledgement statements when they are exported for the sole purpose of determining their pesticidal value, toxicity, or other characteristics, and when there is no expected pesticidal benefit to be derived from use of the material. To provide adequate safeguards against the use of research products in a way that could cause risk

to human health and the environment, EPA proposes further clarifying its position regarding what qualifies as a research use. EPA considered proposing that qualification as research use be determined by the quantity of product shipped, but believes that it is difficult to define a set amount that would define research use for all products. Consequently, EPA is proposing that the presumption of research use be based on the actual intended use of the product. Therefore, EPA proposes that a research use will not be presumed if tests of the product are: (1) Land uses of more than 10 acres, or which affect food or feed crops which are intended for consumption; (2) aquatic uses of more than 1 acre, or which involve water used for irrigation, drinking, or recreation, or which affect plants or animals taken for food or feed from such waters; or (3) tests on or with animals which may subsequently be used for food or feed. EPA further proposes that the exporter bear the burden of demonstrating that the product qualifies for the research exemption, before the research product is shipped, since it is not possible for EPA to directly monitor research uses once the product is exported. The range of options for demonstrating that a product is for research use only include requiring exporters to maintain records for 3 years after the export supporting the research claim, or to submit a statement identifying the shipment and stating that the product is being shipped as a research product as defined by the guidance provided in this document.

B. Labeling

The proposed policy statement would clarify EPA's position that all unregistered products, including ones that are similar in composition and use to registered products, must comply with the labeling provisions of section 17(a)(1), and that all products not bearing a valid EPA registration number must contain the following language on their label or labeling: "Not Registered for Use in the United States of America." EPA believes that section 17(a)(1), together with section 2(q)(1)(H), requires all unregistered products exported from the United States to be labeled as such. To comply with the statute, this label statement must appear on the products. Thus, for the purpose of the section 17(a)(1) labeling requirements, a pesticide which is not registered for use under section 3 will be considered to be unregistered and therefore must bear the bilingual statement "Not Registered for Use in the United States of America."

If the similarity in composition and use exemption for unregistered pesticides is maintained with regard to the requirement to submit purchaser acknowledgement statements, EPA proposes requiring the ingredient statement to be as consistent as possible with existing rules regarding the labeling of registered pesticides, in accordance with section 17(a)(1). As such, EPA seeks to avoid any ambiguity regarding what are accepted as the common and/or chemical name of the product in the United States. Where different common and/or chemical names apply in the importing country, EPA's requirement may be met through the use of supplemental labeling as described in this policy.

The proposed policy would also clarify that all exported pesticides are subject to the provisions of FIFRA sections 2(p) and 2(q), as specified in section 17(a)(1) and described in detail in this document. However, in the case that doing so conflicts with requirements of the importing country, EPA would still permit the use of supplemental labeling to meet the EPA requirements and to accommodate the labeling requirements of importing countries.

Although this policy statement proposes to continue requiring certain labeling statements to be bilingual, EPA is soliciting comments on requiring that the labeling statements which are currently required to be bilingual, be multilingual. As such, the previously bilingual labeling requirements would be required to be in English, in the language of the purchaser's country, and, if different, in the language of the country of final destination.

C. Purchaser Acknowledgement Statement

EPA proposes modifying its policy regarding exemptions from the purchaser acknowledgement statement requirement of section 17(a)(2) for unregistered pesticides similar in composition and use to registered pesticides. EPA intends to reiterate that purchaser acknowledgement statements are to be obtained from the foreign purchaser, but, to improve the utility of these statements, EPA is proposing that the statements be applicable to countries of purchase and of final destination, and is proposing that the statements be required to be multilingual. As such, the statement would be required to be in English, in the language of the foreign purchaser's country, and, if different, in the language of the final destination. EPA is also proposing that, in the case where more than one language is involved due to more than one destination, e.g., where an intermediary ships to multiple countries of final destination, either a multilingual statement be submitted to EPA, or multiple statements in all required languages be submitted to EPA.

Finally, EPA is soliciting comments on the option of requiring reporting for each shipment, rather than annually for the first shipment by a particular exporter to a particular purchaser for each importing country.

1. *Similar in composition and use exemption.* In the 1980 policy statement, EPA stated that exported pesticide products that are claimed to be similar in composition and use to registered pesticides were exempt from the provisions of section 17(a)(2). Such similarity was defined in the 1980 statement as claimable if the product had the same active ingredients, the same use pattern, and the same general toxicity as a registered pesticide. However, EPA has since determined that there are difficulties in confirming the validity of such similarity claims. In practice, the 1980 policy places on EPA the burden of evaluating each similarity claim for which no acknowledgement statement was submitted to determine whether the exported product is indeed similar to a registered product. Such an interpretation makes it difficult to ascertain whether such claims are valid during an inspection, and requires a high use of resources to effectively enforce the acknowledgement statement requirement. EPA has determined that there are basically two alternatives that would resolve this issue: either remove the exemption, or require exporters to support any exemption claimed.

EPA is considering both options in this proposal. EPA encourages comments on this issue, particularly regarding the records and reports that would be required, and the utility to the importing country's government, if EPA were to maintain the exemption for unregistered products similar in composition and use to registered products. The two options are:

a. *Removal of the exemption.* EPA could remove the similar in composition and use exemption entirely. By removing the exemption, all unregistered pesticides, regardless of similarity in composition and use to registered pesticides, would be subject to the acknowledgement statement requirements of section 17(a)(2). In removing the exemption, EPA would require the exporter to obtain and submit to EPA purchaser acknowledgement statements for all exported unregistered pesticides in accordance with the procedures outlined in Unit V of this document. EPA specifically solicits comments regarding

the impact on both industry and the governments of receiving countries in terms of the number of notices that may be required if this exemption is removed, and any potential benefit to importing countries.EPA esstimates that four times as many purchaser acknowledgement statements may result under this option.

b. *Retain the exemption.* Alternatively, EPA could retain the similar in composition and use exemption, and require additional verification on the part of the exporter to substantiate any exemption claimed. EPA believes that the existing exemption, by reducing the number of acknowledgement statements transmitted, increases the utility and importance given to statements involving unregistered products which have been judged to be hazardous or for which no assessment has been made. However, EPA believes that it is acceptable to exempt such products only if there is no question concerning the validity of the claim. Hence, any exported unregistered product that is substantially similar in composition and use to a registered product, as specified in the 1980 policy and as reiterated in this policy, would not require a purchaser acknowledgement statement if appropriate recordkeeping requirements and/or reporting to support the claim are met.

In proposing this option, EPA believes that verification of claims will not require substantial effort on the part of exporters, since the decision to claim such an exemption should be based upon existing documentation. This option requires that such documentation be made available to EPA upon request, and will be expected to be maintained for 3 years after the date of export. If the exemption is retained, EPA will consider requiring the retention of certain records in addition to requiring the submission of reports in support of the similarity claims. EPA encourages comment on the incremental benefits and burdens of requiring reporting in addition to maintaining records of similarity claims. Reports or records would identify that such claims are made and the basis for the claim, i.e., the registered product's identity and the characteristics that establish sufficient similarity between the registered product and the unregistered product. The basic criteria for an exemption, as explained in the 1980 policy, will remain the same.

2. *Multilingual purchaser acknowledgement statements.* EPA proposes that purchaser acknowledgement statements be multilingual, in English and in the language of the country where the foreign purchaser is located, and, if different, in the language of the country of final destination. EPA believes that it is important for the purchaser acknowledgement statements to be understood by the officials of the governments to whom they are transmitted, as well as by the persons who sign them. In cases where more than one language would be needed, e.g., where a pesticide product is shipped to a purchaser who repackages or reformulates for shipment to a number of other countries, EPA is proposing to allow multilingual statements, or to require multiple statements. EPA is interested in receiving comments on this language requirement.

3. *Country of final destination.* EPA would consider products not labeled appropriately for the country of intended final destination (i.e., the country of intended use), and purchaser acknowledgement statements that do not include the country of final destination or which do not meet the multilingual requirements, to not meet the requirements of section 17(a). EPA believes that it was the intent of Congress to provide through section 17(a) assurance that: (1) Exported pesticide products be labeled in a manner to help assure safe use; and (2) importing governments be sufficiently aware of the import of an unregistered U.S. product into their countries, so as to enable them to identify potential risks. These purposes can best be served if the provisions of this section are directed toward the country of intended use. EPA intends to send copies of the purchaser acknowledgement statement to the government of the country where the foreign purchaser is located and of each country of final destination.

II. Requirements of FIFRA Section 17(a)

FIFRA section 17(a) states that producers of pesticides, devices, and active ingredients used in producing pesticides which are intended solely for export are subject to the requirements of FIFRA sections 2(p) (labeling), 2(q)(1)(A), (C), (D), (E), (G), and (H) and 2(q)(2)(A), (B), (C) (i) and (iii) and (D) (misbranding), section 7 (establishment registration) and section 8 (inspections and books and records). In addition, unless a pesticide is registered under section 3 or is being sold under section 6(a)(1), it cannot be lawfully exported unless, prior to export, the foreign purchaser has signed a statement acknowledging that the purchaser understands that the pesticide is not registered for use in the United States and therefore cannot be sold in the United States. A copy of this statement is required to be transmitted to an appropriate official of the government of the importing country.

III. Applicability

For the purposes of the section 17(a) policy, a pesticide product which has been registered under section 24(c) of FIFRA will be considered registered, while a pesticide product which may be legally used only under an experimental use permit (section 5) or an emergency exemption (section 18) will be considered to be unregistered. In addition, a pesticide product whose sale and distribution are legal in intrastate commerce because the producer has filed an application for Federal registration in accordance with the procedure found in 40 CFR 152.230, will be considered to be unregistered for the purposes of this policy. Further, technical grade and manufacturing use pesticides which are not federally registered will be considered to be unregistered for the purposes of this policy.

Pesticide products exported solely for research purposes will be exempted from the purchaser acknowledgement statement requirement of section 17(a)(2). Such research use occurs when the purpose of the shipment is only to determine its value for pesticide purposes or to determine toxicity or other properties, and when the user does not expect to receive any benefit in pest control from its use. Research use will not be presumed if tests are: (1) Land uses of more than 10 acres, or which involve or affect food or feed crops intended for consumption; (2) aquatic uses of more than 1 acre, or which involve water used for irrigation, drinking, or recreation, or which affect fish, shellfish, or other plants or animals taken for food or feed from such waters; or (3) tests on or with animals which may subsequently be used for food or feed.

EPA proposes that the exporter bears the burden of demonstrating that the pesticide qualifies for the research exemption, and must document it before the research product is shipped, since it is not possible for EPA to directly monitor research uses once the product is exported. Exporters shall maintain records for 3 years after the export supporting the research claim. These records would, at a minimum, include verification from the foreign purchaser indicating that the product was used for research in accordance with the guidance provided in this document. EPA is also considering requiring exporters to submit a statement

identifying the shipment and stating that the product is being shipped as a research product as defined by the guidance provided in this document. EPA is soliciting comments on this proposal regarding the applicability of section 17(a) to research products.

Finally, all products, research or otherwise, transferred from a domestic facility to a foreign facility of the same company will be required to comply with the section 17(a) requirements and will be treated in accordance with their U.S. registration status, i.e., a U.S. registered product must comply with the labeling requirements of section 17(a)(1), while an unregistered product must comply with both the label requirements of section 17(a)(1) and (except in the case of research products as specified above, or in the case where the product is similar to a registered product, should the "similar in composition and use" exemption be retained) the purchaser acknowledgement statement requirement of section 17(a)(2). Failure to comply with the requirements of section 17(a), or to maintain records for 3 years after the export, or to allow EPA access to such records as requested, is a violation of FIFRA section 12 and may result in civil or criminal penalties.

IV. Label and Labeling Requirements

Every exported pesticide, device, and active ingredient used in producing a pesticide must bear a label or labeling which meets the requirements of FIFRA section 17(a)(1). In addition, certain information which will satisfy FIFRA section 2(q)(1) (E), (G), and (H) and 2(q)(2) (A) and (D) must appear bilingually on the label or labeling, in English and in the language of the country of intended final use. This information is intended to provide important information to anyone who handles or comes in contact with these products. Therefore, to be considered in compliance with this requirement, the exporter must use the language in which official government business is conducted in the country of final destination, or other language required by such country. When there are several official dialects in the country, that language which is predominately spoken will be acceptable. Further, since labeling is also intended to provide information to all persons coming in contact with the product, EPA is also requesting comments on its proposal that the label or labeling be multilingual, i.e., in English, in the language of the purchaser's country, and, if applicable, in the language of the country of final destination. Should that proposal be adopted, the term multilingual would replace the term bilingual throughout this unit.

A. General Requirements

Pursuant to section 17(a)(1), all exported pesticides, devices, and active ingredients used in producing pesticides must bear a conspicuous and readable label or labeling which includes:

1. EPA establishment numbers.
2. Ingredient statements.
3. Name and address of the producer, registrant (if any), and the name of the person for which the product is produced.
4. Net weight or measure.
5. Skull and crossbones, if the pesticide is highly toxic, and statements of practical treatment in case of poisoning.
6. Warning and caution statements.
7. The statement "Not Registered for Use in the United States of America," if the pesticide is not registered for the particular use for which it is being exported.

Moreover, the label or labeling shall not make false representations or be in imitation of other products.

FIFRA section 2(q)(1)(E) specifies that required statements must be represented " * * * in such terms as to render it likely to be read and understood by the ordinary individual * * * ". Therefore, to satisfy this section the following information must appear bilingually, in the English language and in the language of the country of final destination, on all exported product labeling:

a. The warning and caution statements.

b. The ingredient statement.

c. Where required, the word "Poison" and the statement of practical treatment in case of poisoning.

d. The statement "Not Registered for Use in the United States of America."

B. Specific Guidance

The following provides more specific guidance on particular elements which must appear on the label or labeling of each exported product:

1. *EPA establishment number.* The establishment number may appear anywhere on the label or immediate container in accordance with the establishment registration labeling requirements set forth in 40 CFR 156.10(f).

2. *Precautionary statements.* Warning or caution statements must be bilingual and must be adequate for the protection of persons handling the pesticide, particularly with respect to general toxicological hazards and environmental, physical, or chemical hazards. Where the bilingual translation is obviously inappropriate to protect residents of the importing country, (for example, where a label calls for a gas mask meeting the specification of the U.S. Bureau of Mines) an equivalent caution must be substituted.

3. *Unregistered products.* The labels of all pesticides which are not registered for a particular use or uses in the United States under FIFRA section 3, must prominently display the following statement bilingually: "Not Registered for Use in the United States of America." Unregistered pesticides must also comply with all other labeling provisions under section 17(a)(1). In addition, unregistered pesticides claimed to be similar in composition and use to registered pesticides, if the exemption is retained, must bear cautionary and ingredients statements that are similar to those approved by EPA for registered pesticides posing comparable hazards.

4. *Ingredient statement.* The ingredient statement must appear bilingually on the labeling, unless the ingredients are easily identifiable and likely to be understood by the ordinary individual, despite their being listed in a foreign language. If the "similar in composition and use" exemption is retained and is claimed, the ingredient statement for the unregistered product must be similar to that of the registered product, e.g., uses same chemical or common name for active ingredients.

5. *Use classification statement.* The statement of use classification (Restricted Use Pesticide or General Use Pesticide) must appear on the labeling of the pesticide; however, summary statements regarding the terms of the restriction, e.g., "For retail sale to and application only by Certified Applicators * * * " are not required.

6. *Identity of parties.* Name and address of the producer, registrant (if any), and the person for whom the pesticide was produced, must appear in the labeling.

7. *Net weight.* The net weight must appear on the labeling in conventional English units and metric units.

8. *Highly toxic pesticides.* If the pesticide is highly toxic, the skull and crossbones, the word "Poison", and a statement of practical treatment must appear on the labeling. The word "Poison" and the statement of practical treatment shall be bilingual. The skull and crossbones may be in red or black. For guidance on what pesticides are highly toxic, see 40 CFR 156.10(h).

C. Supplementary Labeling

All exported pesticides must comply with the labeling requirements of FIFRA

sections 2(p) and 2(q), as specified by section 17(a)(1) and as described in this policy statement. However, EPA is concerned that these labeling requirements not conflict with the labeling requirements of the country of intended use. To avoid conflicts, yet still meet the statutory requirements of FIFRA, exporters may use supplemental labeling to meet the requirements of FIFRA. Therefore, exported pesticides, devices, and active ingredients used in producing pesticides which are intended solely for export must bear a label with the appropriate information required by FIFRA, or, in instances where FIFRA required labeling is in direct contravention of foreign labeling requirements, may be accompanied by supplemental labeling which meets those requirements of FIFRA that conflict with the requirements of the importing country. All information required by FIFRA and not directly conflicting with the laws of the country of intended use, must appear on the label affixed to the product container. Any supplemental labeling, which is permitted when FIFRA required labeling contravenes foreign labeling requirements, must be attached to or accompany the product container or shipping container to the final destination. It is EPA's position that the exporter bears the burden of proving that the foreign laws conflict with FIFRA. Accordingly, the exporter must be prepared to substantiate any claim that foreign labeling requirements preclude the label information required by FIFRA from being placed directly on the product container.

V. Purchaser Acknowledgement Statement Requirement

FIFRA section 17(a)(2) states that any pesticides other than a pesticide registered for use under section 3 or sold under section 6(a)(1) shall have a purchaser acknowledgement statement signed by the foreign purchaser prior to export, acknowledging that the purchaser understands that such pesticide is not registered for use in the United States and cannot be sold in the United States. A copy of the statement is required to be transmitted to an appropriate official of the importing country.

EPA will continue to require that the exporter obtain the purchaser acknowledgement statement on an annual basis for the first shipment of each unregistered pesticide to a particular purchaser for each country of final destination. The statement must be submitted to EPA, along with a certification signed by the exporter that the statement was obtained prior to the release of the product for shipment. The statement and certification must be transmitted to EPA within 7 days of receipt by the exporter, or by the date of export, whichever comes first. The statement will be transmitted by EPA to the appropriate officials of the importing country. EPA is considering, as an option, requiring reporting for each shipment and is soliciting comments on this issue.

A. Products Subject to the Requirement

As stated in the 1980 policy, the requirement for obtaining an acknowledgement statement from a foreign purchaser will apply to pesticide products where:

1. The pesticide active ingredient has been judged to pose "unreasonable adverse effects" to human health or the environment, and the registrations of products with that active ingredient have been cancelled, denied, or voluntarily withdrawn for health and safety reasons; or

2. Either, (a) no assessment or no conclusive assessment of the hazard resulting from the use of the pesticide has been made by EPA (while the pesticide may have been used under limited experimental or emergency conditions), or (b) the pesticide has never been registered under section 3 because registration for the pesticide active ingredient has not been sought or has not yet been granted.

In addition to those situations expressly noted in the 1980 policy statement, EPA interprets section 17(a)(2) as applying to all pesticide products which: contain an active ingredient that is not found in an EPA registered product; or, bear labeling for a use which is currently subject to denial or cancellation of registration, including uses not considered by the Administrator during a cancellation or denial determination and those uses voluntarily withdrawn due to health concerns.

In the 1980 policy statement, EPA also included the statement that the requirement would apply to pesticide products in which "the pesticide is being exported for a use which is substantially different from any currently registered use of that pesticide (e.g., a pesticide which is registered in this country for use as a termiticide is exported for use on food crops)." Therefore, unregistered pesticides which are not, as determined by EPA, substantially different from registered products were considered to be exempt from the purchaser acknowledgement statement requirement. This was based on EPA's belief that Congress did not intend the requirement to obtain a purchaser acknowledgement statement to apply to pesticide products which are minor variations on formulations registered in the United States and which contain only active ingredients which are registered in the United States. EPA used its enforcement discretion to allow for the export of unregistered pesticide products with minor variations from registered pesticides, without requiring purchaser acknowledgement statements to be obtained and submitted to EPA. Recently, EPA has determined that the exemption renders compliance monitoring of the purchaser acknowledgement statement requirements problematic, since it is difficult to verify whether a product claimed to be exempt is similar to a registered product.

In this document EPA is presenting the following two options concerning products subject to the purchaser acknowledgement statement requirement. Although only two basic options are being proposed, EPA is considering and is interested in receiving comments on the array of alternatives available between these options. After reviewing public comments, EPA will adopt one of the options in its final policy statement.

(1) Option 1. *Require acknowledgement statements of all unregistered products.* All exported pesticide products are required to comply with the labeling provisions of section 17(a)(1) as specified in Unit IV of this document, and, pursuant to section 2(q)(1)(H), all unregistered pesticide products shall also bear the following bilingual label statement: "Not Registered for Use in the United States of America." In addition, all exporters of unregistered pesticide products must obtain and submit to EPA a purchaser acknowledgement statement as required by section 17(a)(2).

Unregistered pesticides which are produced in the United States solely for export may contain active ingredients that are also registered as components of pesticides used in the United States. However, such products are still considered to be unregistered, and as such must comply with the purchaser acknowledgement statement requirement as described in this policy.

(2) Option 2. *Retain the exemption with provisions to improve verification of validity of exemption claims.* Some pesticides produced in the United States which are intended solely for export contain active ingredients that are also components of registered pesticides used in the United States. In some cases, the export formulations may contain slightly different percentages of active

ingredients and may be labeled differently and are therefore "unregistered" within the meaning of section 3. Rather than require formal registration, certain unregistered pesticides, as determined by EPA, which are similar in composition and use to, or which contain the same active ingredient as, an EPA registered product, shall be considered exempt from the purchaser acknowledgement statement requirement of section 17(a)(2). EPA is concerned that requiring acknowledgement statements for such pesticides is not necessarily useful to the governments of importing countries, and could detract from the attention drawn to more significant notices regarding pesticides which have been banned, restricted, or otherwise denied use for health or safety reasons, or which are unassessed.

Exporters of all unregistered pesticide products that are not, as determined by EPA, similar in composition and use pattern to an EPA registered product must comply with section 17(a)(2). To be considered similar in composition and use pattern, a pesticide product must contain only the same active ingredient or combination of active ingredients, must have the same category of toxicity (i.e., same signal word), and must have a similar use pattern as an EPA registered product.

Products involving changes in use patterns such as changes from non-food to food use, outdoor to indoor use, terrestrial to aquatic use, or non-domestic to domestic use, are not considered to qualify as similar use patterns. Pesticide uses which were never reviewed during a cancellation or denial of registration determination (such as a pesticide use on a crop which is not grown in the United States), or uses which have been voluntarily withdrawn, will not qualify as a similar use, and therefore require an acknowledgement statement.

In addition, if an exporter claims that the unregistered pesticide product it is exporting is similar in composition and use pattern to an EPA registered pesticide, and therefore exempt from the purchaser acknowledgement statement requirement, the exporter shall bear the burden of proving the validity of such a claim. To ensure that such claims are valid, EPA is considering the options that: (a) Records be kept for a minimum of 3 years following exportation, supporting each claim; and/or (b) all claims for exemptions be supported by a report to EPA, submitted prior to the first shipment in a given year, demonstrating the validity of the claim.

Therefore, if EPA retains the exemption, an exporter of an unregistered product claiming this exemption must either maintain records for 3 years after the export or submit a report to EPA documenting such a claim. This documentation shall include:

a. Records already required under section 8.

b. Copies of labeling information from the registered product.

c. Documentation affirming the similarity of composition and use between the unregistered product and the registered product used to support the similarity claim. EPA is considering requiring that records documenting the similarity claim be maintained by the exporter pursuant to section 8, and that the records be made available to EPA upon request. In addition, EPA is alternatively considering requiring the exporter to maintain the data supporting the similarity claim, or requiring reports to be submitted prior to the export of the pesticide for which the similarity claim is made. If EPA determines that the claim of similarity for a particular product is without merit, EPA will consider all exports of the pesticide without a purchaser acknowledgement statement to have been in violation of FIFRA.

Furthermore, pursuant to section 2(q)(1)(H), all unregistered pesticide products, including those which are similar in composition and use pattern to an EPA registered product, must bear the following bilingual label statement: "Not Registered for Use in the United States of America." This is consistent with EPA's interpretation that all exported pesticide products must comply with the labeling requirements of section 17(a)(1) as detailed in Unit IV of this document.

B. Procedures for Obtaining and Transmitting Purchaser Acknowledgement Statements

The procedure that an exporter of unregistered pesticides must follow in obtaining and transmitting the foreign purchaser acknowledgement statements are as follows:

1. The exporter must provide the foreign purchaser with instructions about the required information on a purchaser acknowledgement statement and inform the foreign purchaser that the shipment of the pesticide product cannot be undertaken unless the exporter has received from the foreign purchaser a properly completed, signed, and dated acknowledgement statement.

2. The exporter must secure, prior to shipment, a purchaser acknowledgement statement which contains the information outlined in the Required Information section of this document. Such a statement must be multilingual and must be secured for the first purchase each year of a particular pesticide product by the foreign purchaser destined for each particular country. If a foreign purchaser makes subsequent purchases from the exporter that are intended for different destination countries than those identified in any acknowledgement statements provided earlier in that year, purchaser acknowledgement statements must be obtained before shipment of those subsequent purchases to the foreign purchaser can be made. Foreign purchasers may provide a single acknowledgement statement in the languages of all countries of intended destination that identifies all the countries of intended destination before the first purchase in a year, or foreign purchasers may provide separate acknowledgement statements for each country of ultimate destination at the beginning of the year or at the time of the purchases that are intended for those destinations.

3. The purchaser acknowledgement statement, along with the certification signed by the exporter that exportation did not take place until a signed acknowledgement statement was received, must be submitted to EPA within 7 days of receipt by the exporter, or by the date of export, whichever occurs first. The purchaser acknowledgement statement must be transmitted to the following address: Environmental Protection Agency, Office of Compliance Monitoring (EN-342), 401 M St., SW., Washington, DC 20460, Attention: Export Acknowledgement Statement.

4. If EPA retains the "similar in composition and use" exemption for unregistered products, as discussed in Option 2 of this unit, and an exporter claims the exemption, the exporter must maintain the appropriate records necessary for verifying the claim, and may also be required to submit appropriate verification of the claim.

In addition, if EPA allows a "research" exemption as discussed in this document, and an exporter claims the exemption, the exporter must maintain records for 3 years after the export supporting the research claim and, if adopted, submit to EPA the appropriate statement verifying the claim.

5. Currently, after the exporter obtains and submits to EPA the signed foreign purchaser acknowledgement statement, EPA transmits a copy of the statement to the State Department, which in turn transfers it to an appropriate government official in the importing country. EPA is considering amending

this procedure to provide direct transmittal from EPA to the appropriate government official in the receiving countries. EPA believes that this will expedite the transfer of information which may be essential for informed decision-making by potential receiving countries.

C. Information Required in the Purchaser Acknowledgement Statement

The purchaser acknowledgement statement must include the following multilingual information, in English, in the language of the purchaser's country, and in the language of the country of final destination, if different:

1. Name and address of the exporter.
2. Name and address of the foreign purchaser.
3. Name of the product and the active ingredient.
4. Statement that indicates that the foreign purchaser understands that the product is not registered for use in the United States and cannot be sold in the United States.
5. Country or countries of final destination of the export shipment, i.e., where the exported pesticide is intended to be used, if different from the foreign purchaser's address.
6. Signature of the foreign purchaser.
7. Date of the foreign purchaser's signature.

Although EPA does not currently require a particular format for the statement, EPA solicits comments on whether the statement would be of more utility if a specific format was required, or a particular form provided, e.g., a form similar to and in harmony with the accepted international form for notification under the PIC program.

VI. Confidentiality

Persons submitting the information specified in the purchaser acknowledgement statement may assert a claim of business confidentiality by marking the information claimed confidential as "FIFRA Confidential Business Information." Information so claimed will not be disclosed, with the exception of disclosure to the foreign government, except in accordance with the procedures set forth in 40 CFR part 2, 7 U.S.C. 136h, and this policy statement. If such a claim is not asserted, EPA may disclose the information to the public without providing further notice prior to disclosure or an opportunity to object. Notwithstanding any claim of confidentiality, the purchaser acknowledgement statement will be forwarded to the appropriate foreign government officials in its entirety, as required by section 17(a)(2).

In addition, the following information will generally not be considered confidential since it is considered to be a part of information in the public record: (a) The fact that a producer makes a registered or unregistered pesticide product; (b) the fact that an acknowledgement statement or other notice of export has been filed by an exporter; and (c) the name of the exported product, and, if applicable, the names of the active ingredients of the pesticide. Therefore, the information listed in the Required Information section under Unit V.A.1 and 3 of this Notice will not be entitled to confidentiality.

EPA believes that other information, such as the name of the country of final destination and quantity of export, may not be entitled to confidential treatment, and is reviewing the confidential status of that information. EPA will include, in its final policy statement, a statement of its findings regarding the confidentiality of such information.

VII. Relationship to Other Statutory Requirements

Producers of any pesticide, device, or active ingredient used in producing a pesticide which are intended for export are subject to the requirement to register the establishment in which the pesticide is produced, including the reporting requirements of FIFRA section 7 and the regulations at 40 CFR part 167, as well as the recordkeeping requirements of FIFRA section 8 and the regulations found at 40 CFR part 169.

EPA does not consider it a violation of FIFRA to produce a pesticide, device, or pesticide active ingredient for export in accordance with the directions of a foreign purchaser, when properly labeled and, in the case of unregistered pesticides, when the foreign purchaser has signed the required purchaser acknowledgement statement and the exporter has forwarded this statement to EPA.

Exported pesticides, devices, and active ingredients used in producing pesticides which do not bear labels or labeling in compliance with FIFRA section 17(a)(1) will be considered to be misbranded. Exporters of such pesticides or devices will be subject to civil or criminal liabilities for violation of FIFRA section 12(a)(1) (E) or (F)—misbranding. Exporters of unregistered pesticides who fail to secure the required purchaser acknowledgement statement will be subject to civil or criminal liabilities for violation of FIFRA section 12(a)(1)(A)—selling or distributing an unregistered pesticide, or section 12(a)(2)(M)—falsifying information submitted to EPA or records required to be maintained. Falsification of the required certification may subject an exporter to sanctions under 18 U.S.C. 1001.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that the proposed revisions do not constitute a major action because they do not meet any of the criteria set forth and defined in section 1(b) of the Order. Costs were estimated based on existing program experience, including the number of annual submissions presently made to EPA that would be affected by proposed changes.

This policy was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the public file at the Public Docket location listed under the **ADDRESSES** section of this document.

B. Paperwork Reduction Act

This policy proposes to amend provisions of the foreign purchaser acknowledgement statement of unregistered pesticides program which are currently cleared by the Office of Management and Budget (OMB) under control number 2070–0027. The information collection requirements imposed by this proposed policy statement have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. A copy of the information collection request (ICR) document may be obtained from the Information Policy Branch of the Office of Policy, Planning and Evaluation (OPPE) of EPA at the address given below.

Public reporting for this collection of information is estimated at an average of 0.75 hours per acknowledgement statement, with an additional 0.25 hours to fulfill the multilingual requirement and an alternate 0.50 hours for those claiming the research exemption. An estimated 976 acknowledgement statements and an estimated 195 research claims per year will be required under this activity, for a total of 1074 hours of annual burden. This adds 891 hours to the estimated annual burden of this activity, which, under the existing program is estimated to consist of a total annual burden of 183 hours, based on an average of 0.75 hours per acknowledgement statement and 244

statements per year. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information to: Chief, Information Policy Branch (PM–233), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to the Office of Management and Budget (Paperwork Reduction Project; 2070–0027), Washington, DC 20503, Attention: Desk Officer for EPA.

Authority: 7 U.S.C. 136o.

Dated: February 2, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–3250 Filed 2–9–90; 8:45 am]

BILLING CODE 6560–50–D

federal register

Monday
February 12, 1990

Part IV

The President

Proclamation 6091—National Women and Girls in Sports Day, 1990

Legislative Calendar

Federal Register
Vol. 55, No. 29
Monday, February 12, 1990

Presidential Documents

Title 3—

The President

Proclamation 6091 of February 8, 1990

National Women and Girls in Sports Day, 1990

By the President of the United States of America

A Proclamation

Today we note with great pride and admiration the many accomplishments made by American women in sports. From participating on school sports teams to representing the United States at the Olympic Games, girls and women of every age are talented athletes and competitors.

Through athletics, many young women have developed a greater sense of self-confidence, self-discipline, and individual initiative. Participation in sports has also enabled many girls and women to enjoy more fully the rewards of being physically fit.

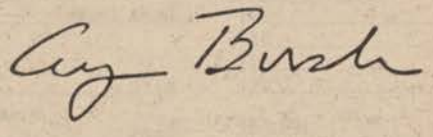
The leadership skills girls and women gain through sports and fitness activities serve them well throughout life—in their education, in the course of their daily activities, at home, and in the work force. Our Nation also benefits from the leadership and example provided by women athletes. Hardworking and determined and firmly committed to excellence, female athletes are positive role models for young people throughout the United States.

In recent years, our Nation has made important strides towards encouraging greater participation in girls' and women's sports. Today we look for continued progress. Daily physical education classes for students in grades K through 12 can serve as a valuable means for promoting athletic achievement among young women. New research into fitness and sports programs for women is also promising.

To commemorate the participation, achievement, and excellence of women and girls in sports, the Congress, by House Joint Resolution 82, has designated February 8, 1990, as "National Women and Girls in Sports Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim February 8, 1990, as National Women and Girls in Sports Day. I invite the Governors of the States, appropriate Federal agencies, and the American people to join me in recognizing the significance of women's athletic achievements.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of February, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 90-3438
Filed 2-9-90; 10:06 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 55, No. 29

Monday, February 12, 1990

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

3385-3562.....1
3563-3714.....2
3715-3934.....5
3935-4164.....6
4165-4394.....7
4395-4596.....8
4597-4828.....9
4829-4980.....12

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6091.....4978
Administrative Orders:
Orders:
Feb. 1, 1990.....3935
Presidential Determination:
No. 90-7 of
Jan. 17, 1990.....4826
No. 90-9 of
Jan. 26, 1990.....4827

5 CFR

831.....4597
842.....4597
890.....3563
2637.....4308

7 CFR

246.....3385
277.....4350
354.....3564
401.....4395
905.....3565
907.....3567, 3937, 4598
910.....3570, 4600
932.....4397
1430.....4306
1765.....3570
1770.....3387
1772.....3685
1944.....3939
1951.....4398
1955.....3939
1962.....4165
Proposed Rules:
29.....4615
54.....3962
55.....3963
56.....3963
59.....3963
68.....4582
70.....3963
300.....3965
319.....3965
322.....3968
499.....4382

8 CFR

238.....3715

9 CFR

391.....4410
Proposed Rules:
92.....3969, 4849

10 CFR

435.....3714
Proposed Rules:
Ch. I.....4615
35.....4049
40.....3970
110.....4181

12 CFR

264b.....3576
563.....4601
Proposed Rules:
9.....4184
208.....4810
225.....4810
325.....4616
330.....4755
331.....4755

13 CFR

134.....4411
309.....3400

14 CFR

39.....3577-3581, 4165, 4412-4419, 4829, 4832
71.....3583, 4167, 4168, 4420
73.....3685
75.....4168
97.....4834
121.....3698
Proposed Rules:
Ch. I.....4849
25.....4790
39.....4431-4436, 4850
71.....4198

18 CFR

32.....3943
271.....4602
272.....3944

20 CFR

404.....4936
416.....4421, 4936
Proposed Rules:
404.....3410
416.....3410, 4438

21 CFR

81.....3516
82.....3516
178.....3584
520.....3585
522.....3586
558.....3585, 3685
1308.....3586
Proposed Rules:
174.....4624
175.....4624
176.....4624
177.....4624

23 CFR

640.....4835

Proposed Rules:
771.....3599

24 CFR
291.....4836

26 CFR
1.....3716, 3792, 4049
602.....4049
Proposed Rules:
1.....3750, 4853
602.....4853

27 CFR
55.....3717
Proposed Rules:
4.....3980
5.....3980

28 CFR
64.....3945

29 CFR
1601.....4306
1910.....3723, 3724
1926.....3724
Proposed Rules:
1910.....3412, 4052, 4938
1926.....4938
2700.....4853

30 CFR
5.....3946
75.....4592
935.....3588
946.....3588, 3733
Proposed Rules:
56.....4624
57.....4624
256.....3603
736.....3982
740.....3982
750.....3982
906.....4625
917.....4866, 4868
935.....3604

31 CFR
215.....3590
Proposed Rules:
565.....3560

32 CFR
Proposed Rules:
199.....3982

33 CFR
84.....3946
87.....3946
117.....3948, 4603
334.....3591
Proposed Rules:
117.....3750, 4869, 4936
161.....3704
165.....3984

35 CFR
119.....4837

38 CFR
21.....3738
Proposed Rules:
3.....4199
36.....4869

39 CFR
Proposed Rules:
111.....3985

40 CFR
52.....3401-3403, 3593-3595, 4169
81.....3403, 4169
141.....4423
142.....4423
143.....4423
180.....4174
228.....3688, 3948
271.....4604
799.....3407
Proposed Rules:
52.....3606, 4201
86.....3685
152.....4956
153.....4956
155.....4956
156.....4956
157.....4956
162.....4956
163.....4956
164.....4956
165.....4956
166.....4956
167.....4956
168.....4956
169.....4956
170.....4956
171.....4956
172.....4956
173.....4956
180.....4203, 4956
228.....3693
260.....4440
261.....4440
262.....4440
264.....4440
265.....4440
268.....4440
270.....4440
372.....4879

41 CFR
Subtitle F.....3740
Ch. 101.....3740
101-49.....3953
Proposed Rules:
201-1.....4204
201-2.....4204
201-3.....4204
201-4.....4204
201-6.....4204
201-7.....4204
201-9.....4204
201-11.....4204
201-22.....4204
201-39.....4204
201-45.....4204

42 CFR
36.....4606
433.....4364
Proposed Rules:
433.....4626
1003.....3986

43 CFR
22.....4609
5450.....3943
Public Land Orders:
6764.....3740
6765.....4838
Proposed Rules:
4700.....3989

44 CFR
64.....3955, 3956

45 CFR
2.....4610
95.....4364
205.....4364
307.....4364

46 CFR
25.....3957
184.....3957

47 CFR
2.....4174
63.....3741
65.....4820
73.....3741, 4175, 4177, 4611, 4612, 4838, 4839
87.....4174
97.....4612
Proposed Rules:
1.....4882
2.....4883
22.....4882-4884
65.....4822
73.....3751, 3752, 4205-4208, 4631, 4632, 4884-4886
76.....3415, 3752, 4208
80.....4886
90.....4883-4888
94.....4888

48 CFR
3.....4936
5.....3878
6.....3878
14.....3878
15.....3878
17.....3878
19.....3878
22.....3878
28.....3878
29.....3878
31.....3878
35.....3878
46.....3878
47.....3878
48.....3878
52.....3878
53.....3878
Proposed Rules:
42.....3794
52.....3794, 3798
5243.....3608

49 CFR
177.....4423
240.....4177
391.....3546
571.....4424
591.....3742
Proposed Rules:
28.....4633
171.....4445
172.....4445
173.....4445
174.....4445
175.....4445
176.....4445
177.....4445
178.....4445
533.....3608
571.....3618, 4445-4453
1244.....3416

50 CFR
17.....4152, 4157
380.....4178
650.....4613
663.....3747
672.....3408, 4839
675.....4839
Proposed Rules:
17.....4209
628.....4049, 4212
652.....3416

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: January 19, 1990.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1–699	15.00	Jan. 1, 1989
700–1199	17.00	Jan. 1, 1989
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1989
27–45	12.00	Jan. 1, 1989
46–51	17.00	Jan. 1, 1989
52	23.00	[2] Jan. 1, 1988
53–209	18.00	Jan. 1, 1989
210–299	24.00	Jan. 1, 1989
300–399	12.00	Jan. 1, 1989
400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1989
900–999	28.00	Jan. 1, 1989
1000–1059	16.00	Jan. 1, 1989
1060–1119	13.00	Jan. 1, 1989
1120–1199	11.00	Jan. 1, 1989
1200–1499	20.00	Jan. 1, 1989
1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
1940–1949	21.00	Jan. 1, 1989
1950–1999	22.00	Jan. 1, 1989
2000–End	9.00	Jan. 1, 1989
8	13.00	Jan. 1, 1989
9 Parts:		
1–199	20.00	Jan. 1, 1989
200–End	18.00	Jan. 1, 1989
10 Parts:		
0–50	19.00	Jan. 1, 1989
51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
400–499	14.00	Jan. 1, 1989
500–End	28.00	Jan. 1, 1989
11	10.00	[2] Jan. 1, 1988
12 Parts:		
1–199	12.00	Jan. 1, 1989
200–219	11.00	Jan. 1, 1989
220–299	19.00	Jan. 1, 1989
300–499	15.00	Jan. 1, 1989
500–599	20.00	Jan. 1, 1989
600–End	14.00	Jan. 1, 1989
13	22.00	Jan. 1, 1989
14 Parts:		
1–59	24.00	Jan. 1, 1989
60–139	21.00	Jan. 1, 1989
140–199	10.00	Jan. 1, 1989
200–1199	21.00	Jan. 1, 1989
1200–End	12.00	Jan. 1, 1989
15 Parts:		
0–299	12.00	Jan. 1, 1989
300–799	22.00	Jan. 1, 1989
800–End	14.00	Jan. 1, 1989
16 Parts:		
0–149	12.00	Jan. 1, 1989
150–999	14.00	Jan. 1, 1989
1000–End	19.00	Jan. 1, 1989
17 Parts:		
1–199	15.00	Apr. 1, 1989
200–239	16.00	Apr. 1, 1989
240–End	22.00	Apr. 1, 1989
18 Parts:		
1–149	16.00	Apr. 1, 1989
150–279	16.00	Apr. 1, 1989
280–399	14.00	Apr. 1, 1989
400–End	9.50	Apr. 1, 1989
19 Parts:		
1–199	28.00	Apr. 1, 1989
200–End	9.50	Apr. 1, 1989
20 Parts:		
1–399	13.00	Apr. 1, 1989
400–499	24.00	Apr. 1, 1989
500–End	28.00	Apr. 1, 1989
21 Parts:		
1–99	13.00	Apr. 1, 1989
100–169	15.00	Apr. 1, 1989
170–199	17.00	Apr. 1, 1989
200–299	6.00	Apr. 1, 1989
300–499	28.00	Apr. 1, 1989
500–599	21.00	Apr. 1, 1989
600–799	8.00	Apr. 1, 1989
800–1299	17.00	Apr. 1, 1989
1300–End	6.50	Apr. 1, 1989
22 Parts:		
1–299	22.00	Apr. 1, 1989
300–End	17.00	Apr. 1, 1989
23	17.00	Apr. 1, 1989
24 Parts:		
0–199	19.00	Apr. 1, 1989
200–499	28.00	Apr. 1, 1989
500–699	11.00	Apr. 1, 1989
700–1699	23.00	Apr. 1, 1989
1700–End	13.00	Apr. 1, 1989
25	25.00	Apr. 1, 1989
26 Parts:		
§§ 1.0-1–1.60	15.00	Apr. 1, 1989
§§ 1.61–1.169	25.00	Apr. 1, 1989
§§ 1.170–1.300	18.00	Apr. 1, 1989
§§ 1.301–1.400	15.00	Apr. 1, 1989
§§ 1.401–1.500	28.00	Apr. 1, 1989
§§ 1.501–1.640	16.00	Apr. 1, 1989
§§ 1.641–1.850	19.00	Apr. 1, 1989
§§ 1.851–1.1000	31.00	Apr. 1, 1989
§§ 1.1001–1.1400	17.00	Apr. 1,1989
§§ 1.1401–End	23.00	Apr. 1, 1989
2–29	20.00	Apr. 1, 1989
30–39	14.00	Apr. 1, 1989
40–49	13.00	Apr. 1, 1989
50–299	16.00	Apr. 1, 1989
300–499	16.00	Apr. 1, 1989
500–599	7.00	Apr. 1, 1989
600–End	6.50	Apr. 1, 1989
27 Parts:		
1–199	24.00	Apr. 1, 1989
200–End	14.00	Apr. 1, 1989
28	27.00	July 1, 1989

Title	Price	Revision Date
29 Parts:		
0–99	17.00	July 1, 1989
100–499	7.50	July 1, 1989
500–899	26.00	July 1, 1989
900–1899	12.00	July 1, 1989
1900–1910 (§§ 1901.1 to 1910.441)	24.00	July 1, 1989
1910 (§§ 1910.1000 to end)	13.00	July 1, 1989
1911–1925	9.00	July 1, 1989
1926	11.00	July 1, 1989
1927–End	25.00	July 1, 1989
30 Parts:		
0–199	21.00	July 1, 1989
200–699	14.00	July 1, 1989
700–End	20.00	July 1, 1989
31 Parts:		
0–199	14.00	July 1, 1989
200–End	18.00	July 1, 1989
32 Parts:		
1–39, Vol. I	15.00	[4] July 1, 1984
1–39, Vol. II	19.00	[4] July 1, 1984
1–39, Vol. III	18.00	[4] July 1, 1984
1–189	23.00	July 1, 1989
190–399	28.00	July 1, 1989
400–629	22.00	July 1, 1989
630–699	13.00	July 1, 1989
700–799	17.00	July 1, 1989
800–End	19.00	July 1, 1989
33 Parts:		
1–199	30.00	July 1, 1989
200–End	20.00	July 1, 1989
34 Parts:		
1–299	22.00	July 1, 1988
300–399	12.00	July 1, 1988
400–End	26.00	July 1, 1988
35	10.00	July 1, 1989
36 Parts:		
1–199	12.00	July 1, 1989
200–End	21.00	July 1, 1989
37	14.00	July 1, 1989
38 Parts:		
0–17	21.00	July 1, 1988
18–End	19.00	July 1, 1988
39	14.00	July 1, 1989
40 Parts:		
1–51	25.00	July 1, 1989
52	25.00	July 1, 1989
53–60	29.00	July 1, 1989
61–80	11.00	July 1, 1989
81–85	11.00	July 1, 1989
81–99	25.00	July 1, 1988
100–149	27.00	July 1,1989
150–189	21.00	July 1, 1989
190–299	29.00	July 1, 1989
300–399	10.00	July 1,1989
400–424	23.00	July 1, 1989
425–699	23.00	July 1, 1989
700–789	15.00	July 1, 1989
790–End	21.00	July 1, 1989
41 Chapters:		
1, 1–1 to 1–10	13.00	[5] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
3–6	14.00	[5] July 1, 1984
7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
10–17	9.50	[5] July 1, 1984
18, Vol. I, Parts 1–5	13.00	[5] July 1, 1984
18, Vol. II, Parts 6–19	13.00	[5] July 1, 1984
18, Vol. III, Parts 20–52	13.00	[5] July 1, 1984
19–100	13.00	[5] July 1, 1984
1–100	8.00	July 1, 1989

Title	Price	Revision Date
101	24.00	July 1, 1989
102–200	11.00	July 1, 1989
201–End	13.00	July 1, 1989
42 Parts:		
1–60	16.00	Oct. 1, 1989
61–399	6.50	Oct. 1, 1989
400–429	22.00	Oct. 1, 1988
430–End	22.00	Oct. 1, 1988
43 Parts:		
1–999	15.00	Oct. 1, 1988
1000–3999	26.00	Oct. 1, 1988
4000–End	12.00	Oct. 1, 1989
*44	22.00	Oct. 1, 1989
45 Parts:		
1–199	16.00	Oct. 1, 1989
200–499	12.00	Oct. 1, 1989
500–1199	24.00	Oct. 1, 1989
1200–End	18.00	Oct. 1, 1989
46 Parts:		
1–40	14.00	Oct. 1, 1988
41–69	14.00	Oct. 1, 1988
70–89	7.50	Oct. 1, 1989
90–139	12.00	Oct. 1, 1989
140–155	13.00	Oct. 1, 1989
156–165	13.00	Oct. 1, 1989
166–199	14.00	Oct. 1, 1989
200–499	20.00	Oct. 1, 1989
500–End	11.00	Oct. 1, 1989
47 Parts:		
0–19	18.00	Oct. 1, 1988
20–39	18.00	Oct. 1, 1988
40–69	9.50	Oct. 1, 1989
70–79	18.00	Oct. 1, 1988
80–End	19.00	Oct. 1, 1988
48 Chapters:		
1 (Parts 1–51)	28.00	Oct. 1, 1988
1 (Parts 52–99)	18.00	Oct. 1, 1988
2 (Parts 201–251)	18.00	Oct. 1, 1988
2 (Parts 252–299)	18.00	Oct. 1, 1988
3–6	20.00	Oct. 1, 1988
7–14	25.00	Oct. 1, 1988
15–End	26.00	Oct. 1, 1988
49 Parts:		
1–99	14.00	Oct. 1, 1989
100–177	24.00	Oct. 1, 1988
178–199	20.00	Oct. 1, 1988
200–399	19.00	Oct. 1, 1988
400–999	24.00	Oct. 1, 1988
1000–1199	18.00	Oct. 1, 1989
1200–End	18.00	Oct. 1, 1988
50 Parts:		
1–199	17.00	Oct. 1, 1988
*200–599	15.00	Oct. 1, 1989
600–End	13.00	Oct. 1, 1988
CFR Index and Findings Aids	29.00	Jan. 1, 1989
Complete 1990 CFR set	620.00	1990
Microfiche CFR Edition:		
Complete set (one-time mailing)	115.00	1985
Complete set (one-time mailing)	185.00	1986
Complete set (one-time mailing)	185.00	1987
Subscription (mailed as issued)	185.00	1988
Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1990

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

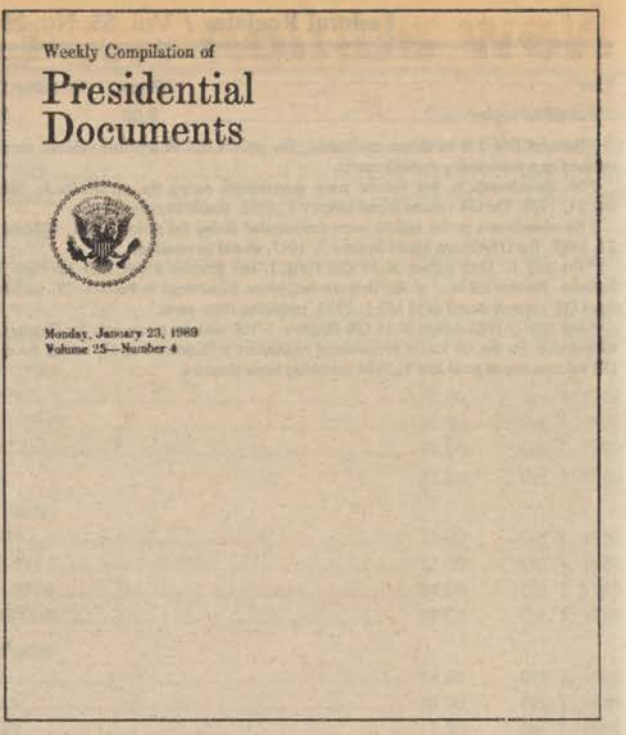
[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

The authentic text behind the news . . .

The Weekly Compilation of **Presidential Documents**

Administration of George Bush



This unique service provides up-to-date information on Presidential policies and announcements. It contains the full text of the President's public speeches, statements, messages to Congress, news conferences, personnel appointments and nominations, and other Presidential materials released by the White House.

The Weekly Compilation carries a Monday dateline and covers materials released during the preceding week. Each issue contains an Index of Contents and a Cumulative Index to Prior Issues.

Separate indexes are published periodically. Other features include lists of acts approved by the President, nominations submitted to the Senate, a checklist of White House press releases, and a digest of other Presidential activities and White House announcements.

Published by the Office of the Federal Register, National Archives and Records Administration.

Superintendent of Documents Subscriptions Order Form

Order Processing Code:
***6466**

Charge your order. It's easy!

Charge orders may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays)

☐ **YES,** please enter my subscription for one year to the **WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (PD)** so I can keep up to date on Presidential activities.

☐ $96.00 First Class ☐ $55.00 Regular Mail

1. The total cost of my order is $_____. All prices include regular domestic postage and handling and are subject to change. International customers please add 25%.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

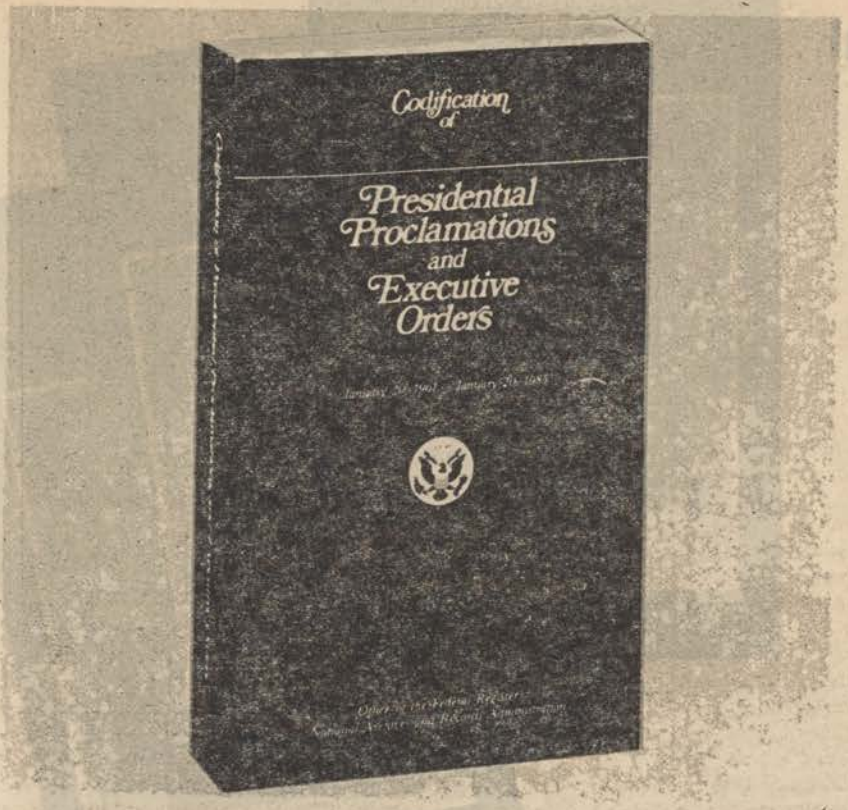
Thank you for your order!

_____
(Signature)

(Rev. 1-20-89)

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9371

New edition .... Order now !



For those of you who must keep informed about **Presidential Proclamations and Executive Orders,** there is a convenient reference source that will make researching these documents much easier.

Arranged by subject matter, this edition of the *Codification* contains proclamations and Executive orders that were issued or amended during the period April 13, 1945, through January 20, 1989, and which have a continuing effect on the public. For those documents that have been affected by other proclamations or Executive orders, the codified text presents the amended version. Therefore, a reader can use the *Codification* to determine the latest text of a document without having to "reconstruct" it through extensive research.

Special features include a comprehensive index and a table listing each proclamation and Executive order issued during the 1945–1989 period—along with any amendments—an indication of its current status, and, where applicable, its location in this volume.

Published by the Office of the Federal Register, National Archives and Records Administration

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325

Order Processing Code:
***6661**

Superintendent of Documents **Publications** Order Form

Charge your order. It's easy!

To fax your orders and inquiries–(202) 275-0019

☐ **YES,** please send me the following indicated publication:

_____ copies of the CODIFICATION OF PRESIDENTIAL PROCLAMATIONS AND EXECUTIVE ORDERS, S/N 069-000-00018-5 at $32.00 each.

The total cost of my order is $_____. (International customers please add 25%.) Prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

_____
(Company or personal name) (Please type or print)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)
(Daytime phone including area code)

Please Choose Method of Payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325