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federal register

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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:** May 24, 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.

MINNEAPOLIS, MN

- WHEN:** June 18, at 1:00 p.m.
WHERE: Bishop Henry Whipple Federal
 Building, Room 570, Ft. Snelling, MN.
- RESERVATIONS:** 1-800-366-2998

KANSAS CITY, MO

- WHEN:** June 19, at 9:00 a.m.
WHERE: Federal Building, 601 East
 12th Street, Room 110,
 Kansas City, MO.
- RESERVATIONS:** 1-800-735-8004

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Proclamation 6126 of May 2, 1990

The President

Be Kind to Animals and National Pet Week, 1990

By the President of the United States of America

A Proclamation

Animals and pets have been partners in our American way of life ever since our ancestors first came to these shores. On the frontier, horses and cattle were vital to plowing fields and to transporting people and goods. Dogs not only provided their masters with companionship, but also played a vital role in protecting farmers' and ranchers' livestock.

Today animals and pets continue to be valued by their owners—especially children and older Americans. By caring for pets, children acquire a sense of responsibility and gentleness. They learn that, to remain healthy, pets must have proper food, exercise, and adequate shelter. Many elderly men and women find both security and an answer to loneliness through their pets. For these Americans, and, indeed, for Americans of all ages, household pets and other domestic animals bring fun-filled hours of play and the quiet joy of loyal companionship.

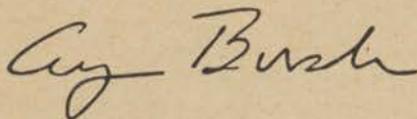
For Americans who are deaf, visually impaired, or otherwise physically disabled, specially trained animals not only serve as a source of companionship but can also provide the assistance needed to live and work with confidence and independence. These animals are integrated into many rehabilitation programs, as well. Every American benefits from use of specially trained animals in the work of law enforcement officers and customs officials.

This week, we acknowledge the many rewards of owning animals and pets, as well as our obligation to protect them against inhumane treatment. We also recognize the dedicated members of the veterinary profession and members of our Nation's animal protection societies for their efforts to promote public awareness of the need to provide domestic animals with proper food, shelter, and veterinary care.

The Congress, by Senate Joint Resolution 236, has designated the week of May 6 through May 12, 1990, as "Be Kind to Animals and National Pet Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of May 6 through May 12, 1990, as Be Kind to Animals and National Pet Week. I call upon the American people to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, 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.



The President

By the President of the United States of America

A Proclamation

Animals and birds have long been partners in our American way of life. They are not mere creatures that exist to be used. On the contrary, they are part of our life and we should treat them as such. It is the duty of every citizen to care for them and to see that they are treated with respect and kindness.

Many animals and birds are being used in a way that is cruel and unnecessary. They are being used for entertainment, for sport, and for other purposes that are not in their best interests. It is the duty of every citizen to see that these animals and birds are treated with respect and kindness, and that they are not used in a way that is cruel and unnecessary.

For animals and birds are not only creatures of the earth, but they are also creatures of the heart. They are our friends and companions, and we should treat them as such. It is the duty of every citizen to care for them and to see that they are treated with respect and kindness.

The world has witnessed the many horrors of animal cruelty and has seen the need for a national day of animal care. It is the duty of every citizen to see that these animals and birds are treated with respect and kindness, and that they are not used in a way that is cruel and unnecessary.

The Congress by Public Law 95-618, the National Animal Care Act, has established the week of the month of May as the National Animal Care Week. It is the duty of every citizen to see that these animals and birds are treated with respect and kindness, and that they are not used in a way that is cruel and unnecessary.

It is the duty of every citizen to care for these animals and birds and to see that they are treated with respect and kindness. It is the duty of every citizen to see that these animals and birds are treated with respect and kindness, and that they are not used in a way that is cruel and unnecessary.

It is the duty of every citizen to care for these animals and birds and to see that they are treated with respect and kindness. It is the duty of every citizen to see that these animals and birds are treated with respect and kindness, and that they are not used in a way that is cruel and unnecessary.

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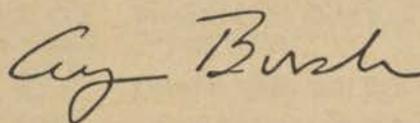
Presidential Documents

Executive Order 12713 of May 1, 1990

Report Required by Section 502 of the Automotive Products Trade Act of 1965

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Automotive Products Trade Act of 1965 (19 U.S.C. 2001 *et seq.*) ("Act"), and in order to provide for the submission to the Congress of the annual report required by section 502 of the Act (19 U.S.C. 2032), it is hereby ordered that authority for submission of the report is delegated to the Secretary of Commerce.

THE WHITE HOUSE,
May 1, 1990.



[FR Doc. 90-10592

Filed 5-2-90; 3:13 pm]

Billing code 3195-01-M

PROBATIONAL DOCUMENTS

Executive Order 11712 of May 1, 1962

Report prepared by Section 501 of the Antitrust Division
Trade Act of 1952

By the authority vested in me as President by the Constitution and laws of the United States of America, I hereby designate the Antitrust Division of the Department of Justice to carry out the provisions of the Trade Act of 1952, in the manner and to the extent specified in the report of the Antitrust Division of the Department of Justice, dated and captioned as above, and to report to the Secretary of Commerce.

THE WHITE HOUSE
MAY 1 1962

Rules and Regulations

Federal Register

Vol. 55, No. 87

Friday, May 4, 1990

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 89F-0148]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2'-(2,5-thiophenediyl)bis(5-*tert*-butylbenzoxazole) as an optical brightener for polycarbonate resins complying with 21 CFR 177.1580. This action is in response to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 4, 1990; written objections and requests for a hearing by June 4, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of May 26, 1989 (54 FR 22813), FDA announced that a food additive petition (FAP 9B4142) had been filed by Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, proposing

that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of 2,2'-(2,5-thiophenediyl)bis(5-*tert*-butylbenzoxazole) as an optical brightener for polycarbonate resins complying with 21 CFR 177.1580.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 178.3297 in the table of paragraph (e) by adding item "5." under the heading "Limitations" for 2,2'-(2,5-thiophenediyl)bis(5-*tert*-butylbenzoxazole) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 4, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that

objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES; ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3297 is amended in the table of paragraph (e) by adding item "5." under the heading "Limitations" for the entry "2,2'-(2,5-Thiophenediyl)bis(5-*tert*-butylbenzoxazole) * * *" to read as follows:

§ 178.3297 *Colorants for polymers.*

* * * * *

(e) * * *

Substances	Limitations
2,2'-(2,5-Thiophenediyl)-bis(5- <i>tert</i> -butylbenzoxazole) (CAS Reg. No. 7128-64-5).	* * *

Substances	Limitations
	5. At levels not to exceed 0.015 percent by weight of polycarbonate resins complying with § 177.1580 of this chapter. The finished polymer shall contact foods of the types identified in Table 1 of § 176.170(c) of this chapter, under categories, I, II, IV-B, VI-B, and VIII under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter.

Dated: April 25, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-10345 Filed 5-3-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 310

[Docket No. 86N-0336]

Prescription Estrogen Drug Products; Patient Package Insert Requirement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the requirements for patient package inserts for estrogen drug products. The revised requirements will help ensure that patient package inserts accurately reflect current information about this class of drug products.

EFFECTIVE DATE: September 4, 1990.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of July 22, 1977 (42 FR 37636), FDA first required manufacturers and dispensers of estrogens to make information available to patients about the use of these products. The regulation adopted at that time required that estrogens be dispensed with a brief informational leaflet directed to the patient, describing the product's benefits and risks. The leaflet—now called a patient package insert—contained information about

side effects associated with the use of estrogens and emphasized the importance of patients discussing the use of these drugs with their physicians. The leaflet noted that a booklet containing more information about the drug product was available from the patient's physician.

In the Federal Register of October 9, 1987 (52 FR 37802), FDA proposed to revise the requirements for patient package inserts for estrogen drug products. These proposed changes were intended (1) to update the technical information in the patient package insert about the benefits and risks of estrogen drug use, and (2) to simplify the content and format of the patient package insert to make the insert more readable and understandable. The proposal was also designed to ensure that the insert could be revised in a more timely fashion to reflect current information about this class of drug products. FDA also proposed to establish more flexible distribution requirements for estrogen drug products and to eliminate current requirements with respect to printing specifications for the patient package insert. After careful consideration of the comments received by the agency, this rule finalizes most of the proposed changes, with a few exceptions.

II. Summary of Comments and the Agency's Responses

Interested persons were given 90 days to submit comments on the proposed rule. The agency received five comments. These are summarized below with the agency's responses.

1. *Printing specifications.* The agency proposed several changes to simplify the patient package insert and to allow manufacturers and other labelers greater flexibility in developing and distributing patient package inserts. In particular, to enhance manufacturers flexibility in preparing patient package inserts, FDA proposed to eliminate current requirements with respect to printing specifications for the patient package inserts. One comment urged the agency to retain the printing specifications, arguing that many women who require estrogen medication are older and have declining eyesight.

Except in the regulations imposing patient package inserts for specific drug products, FDA has not in the past established printing specifications for prescription drug labeling. The agency has found that its routine review of final printed labeling for drugs subject to premarketing clearance, and its other compliance activities, have been adequate to ensure that drug labeling can be read by its intended audiences. The agency now believes that this kind

of monitoring of labeling practices obviates the need to mandate printing specifications for patient labeling.

2. *Distribution of the patient package insert.* The proposal would have relaxed the current requirement that a patient package insert physically accompany every package throughout distribution, and would have allowed alternate distribution methods. Two comments urged the agency to retain the current provision that requires that the patient package insert be included in or attached directly to each dispensed package. The comments argued that this is the best method of assuring distribution of patient package inserts to all consumers.

The agency has carefully considered these comments. The agency agrees that the proposed change in distribution requirements may increase the likelihood that some patients may not receive the patient package insert. The agency also agrees that discontinuing the requirement that the patient package insert be included in or with each dispensed package will increase the likelihood that patients will not receive the required information. Moreover, the agency notes that no comments expressed support for the proposed distribution scheme. For these reasons, the agency concludes that the current provision requiring that the patient package insert be included in or with each package of the drug product should be retained.

3. *Posting of signs to inform consumers of available information.* One comment urged the agency to require the posting of signs in every pharmacy, in physician's offices where sample medications are distributed, in ambulatory care centers, and in hospitals informing patients of their right to request written medication information on any prescription.

The agency shares the concern that patients be adequately informed about their prescription medications. In 1983, in conjunction with the National Council of Patient Information and Education (NCPIE), the agency launched a campaign to encourage patients to communicate with their doctors and pharmacists about their drug prescriptions. The "Get the Answers" campaign, which was disseminated through news releases, advice columns, and drug leaflet systems, urged patients to ask their health professionals questions about their prescriptions. In 1984, FDA conducted a successful "Ask the Doctor about Prescription Drugs" day in cooperation with the American Academy of Family Physicians and a "Call for Action." Also in 1984, NCPIE

and FDA launched a "Give the Answers" campaign to encourage health professionals to utilize the available drug information systems. In 1985, FDA targeted prescription drug patient education efforts to the elderly and Hispanic groups, while NCIPIE launched the "Work Site Initiative" campaign. In 1986 and 1987, FDA participated in the "Talk About Prescriptions" months sponsored by NCIPIE. These campaigns have led to an increased participation by businesses, health organizations, and State and local governments in patient education activities.

The agency's concern to make more information about prescription drugs available to patients is also reflected in FDA's patient package insert regulations. The regulations are structured so that patients will receive patient package inserts accompanying these drug products without asking for them. However, patient package inserts are not required for all drug products, and posting a sign of the type suggested could create confusion among patients. In any event, the request for such a sign for all drug products is beyond the scope of this rulemaking.

4. Labeling guides. In the *Federal Register* of October 9, 1987 (52 FR 37842), the agency announced the availability of revised labeling guidelines for estrogen drug products. These guidelines for professional and patient package inserts were intended to serve as a labeling model to help manufacturers comply with pertinent labeling requirements.

The agency has reconsidered the use of guidelines for estrogen drug product labeling. The agency has concluded that guideline texts for professional and patient package insert labeling for estrogen drug products cannot be finalized in a timely manner to ensure that they reflect the most current medical knowledge of the agency. Therefore, in a notice published elsewhere in this issue of the *Federal Register*, the agency is revoking the guideline texts of professional and patient labeling for estrogen-progestogen combination estrogen drug products. In their place, the agency will provide informal labeling guidance texts for estrogen drug products to assist manufacturers and others in meeting the labeling requirements of 21 CFR 310.515. Labeling guidance texts are informal documents issued under 21 CFR 10.90(b)(9). They do not bind or otherwise obligate the agency or a person referring to them and are not formal agency opinions.

As noted, FDA is making available a guidance text for estrogen patient package inserts. It should be

emphasized that this revised guidance text does not apply to combination estrogen-progestogen oral contraceptives. Manufacturers of estrogen drug products may request the most current labeling guidance text for assistance in meeting the labeling requirements of this regulation.

5. Other changes. On its own initiative, the agency has made several minor changes in the wording and order of paragraphs in the regulation for clarification and consistency with the labeling guidance text.

III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Economic Impact

The agency has previously examined the economic impact of the existing regulation and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). FDA has not received any new information or comments that would alter its previous determination. The final regulation modifies the format of estrogen labeling to make it more easily understood and readable. In addition, the regulation includes general categories of information to be included in the patient package insert, rather than a listing of specific items. No additional burdens are imposed upon manufacturers. Therefore, the agency concludes that this final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512-516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b-360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354-360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b-263n).

2. Section 310.515 is revised to read as follows:

§ 310.515 Patient package inserts for estrogens.

(a) *Requirement for a patient package insert.* FDA concludes that the safe and effective use of drug products containing estrogens requires that patients be fully informed of the benefits and risks involved in the use of these drugs. Accordingly, except as provided in paragraph (e) of this section, each estrogen drug product restricted to prescription distribution, including products containing estrogens in fixed combinations with other drugs, shall be dispensed to patients with a patient package insert containing information concerning the drug's benefits and risks. An estrogen drug product that does not comply with the requirements of this section is misbranded under section 502(a) of the Federal Food, Drug, and Cosmetic Act.

(b) *Distribution requirements.* (1) For estrogen drug products, the manufacturer and distributor shall provide a patient package insert in or with each package of the drug product that the manufacturer or distributor intends to be dispensed to a patient.

(2) In the case of estrogen drug products in bulk packages intended for multiple dispensing, and in the case of injectables in multiple-dose vials, a sufficient number of patient labeling pieces shall be included in or with each package to assure that one piece can be included with each package or dose dispensed or administered to every patient. Each bulk package shall be labeled with instructions to the dispenser to include one patient labeling piece with each package dispensed or, in the case of injectables, with each dose administered to the patient. This section does not preclude the manufacturer or labeler from distributing additional patient labeling pieces to the dispenser.

(3) Patient package inserts for estrogens dispensed in acute-care hospitals or long-term care facilities will be considered to have been provided in accordance with this section if provided to the patient before administration of the first estrogen and every 30 days thereafter, as long as the therapy continues.

(c) *Patient package insert contents.* A patient package insert for an estrogen drug product is required to contain the following information:

- (1) The name of the drug.
- (2) The name and place of business of the manufacturer, packer, or distributor.
- (3) A statement regarding the benefits and proper uses of estrogens.
- (4) The contraindications to use, i.e., when estrogens should not be used.
- (5) A description of the most serious risks associated with the use of estrogens.
- (6) A brief summary of other side effects of estrogens.
- (7) Instructions on how a patient may reduce the risks of estrogen use.
- (8) The date, identified as such, of the most recent revision of the patient package insert.

(d) *Guidance language.* The Food and Drug Administration issues informal labeling guidance texts under § 10.90(b)(9) of this chapter to provide assistance in meeting the requirements of paragraph (c) of this section. Requests for a copy of the guidance text should be directed to the Center for Drug Evaluation and Research, Division of Metabolism and Endocrine Drug Products (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(e) *Exemptions.* This section does not apply to estrogen-progestogen oral contraceptives. Labeling requirements for these products are set forth in § 310.501.

(f) *Requirement to supplement approved application.* Holders of approved applications for estrogen drug products that are subject to the requirements of this section must submit supplements under § 314.70(c) of this chapter to provide for the labeling required by paragraph (a) of this section. Such labeling may be put into use without advance approval by the Food and Drug Administration.

Dated: March 29, 1990.

Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 90-10346 Filed 5-3-90; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Xylazine Hydrochloride Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Vet-A-Mix, Inc., providing for use of xylazine hydrochloride injection as an analgesic and sedative in dogs.

EFFECTIVE DATE: May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Vet-A-Mix, Inc., P.O. Box A, Shenandoah, IA 51601, is the sponsor of NADA 139-236 which originally provided for use in horses of xylazine hydrochloride injection containing 100 milligrams (mg) of xylazine base per milliliter (mL). The firm filed a supplemental NADA that provided for use of a 20 mg/mL formulation of the drug in dogs as a sedative and analgesic. The drug product is limited to use by or on the order of a licensed veterinarian. The supplemental NADA was approved by letter dated April 24, 1990, and 21 CFR 522.2662(b) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(iii) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for an exclusivity period because the reports supporting the supplemental approval do not qualify as "new clinical or field investigations" under that section because there is an earlier approval under section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act for xylazine in dogs based on similar investigations.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.2662 is amended by revising paragraph (b) to read as follows:

§ 522.2662 Xylazine hydrochloride injection.

(b) *Sponsor.* See 000859 in § 510.600(c) of this chapter for use in horses, wild deer, elk, dogs, and cats. See 032998 in § 510.600(c) of this chapter for use in horses and dogs. See 054273 in § 510.600(c) of this chapter for use in horses only.

Dated: April 24, 1990.

Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 90-10347 Filed 5-3-90; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Guam Regulation 89-001]

Safety and Security Zone Regulations; Pacific Ocean and Apra Harbor, Guam, Marianas Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a new safety zone and revised the existing security zone regulations in Apra Outer Harbor, Guam. The U.S. Navy requested that a safety zone be established around the newly constructed Orote Point Ammunition Wharf in Apra Outer Harbor. The Safety zone is needed to safeguard vessels, personnel and property against high explosive handling hazards. Establishing the new safety zone required revising the existing

security zones to accurately reflect expected uses of Apra Harbor and ensure public safety.

EFFECTIVE DATE: June 4, 1990.

FOR FURTHER INFORMATION CONTACT:

The project officer LT Kenneth Parris at (671) 477-3340 or FTS: 550-7314; or the project attorney LCDR Brian Durham at (808) 541-2108 or FTS 551-2108.

SUPPLEMENTARY INFORMATION: On February 6, 1990 the Coast Guard published a notice of proposed rule making in the *Federal Register* (55 FR 3984) for these regulations. Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of these regulations are Lieutenant Kenneth B. Parris, project officer for the Captain of the Port, Guam and Lieutenant Commander Brian Durham, Project Attorney, Fourteenth Coast Guard District Legal Office, Honolulu, Hawaii.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under 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. The users of the port of Guam fall into six main categories; Naval Combatants, Deep Draft Commercial Shipping, Commercial Fishing Vessels, Small Passenger Vessels, Dive Charter Boats and Pleasure Boats. Since these two zones will neither extend into a shipping channel, nor encompass commercial fishing grounds, tour locations, or pleasure boat areas, there should be little adverse impact on harbor use. Safety Zone A abuts one regular commercial diving area. Since Safety Zone A has been in effect less than six weeks in the last two years, it should have only minimal effect. Safety Zone B encompasses one dive charter location and will be unavailable for several months each year. The area encompassed by Safety Zone B is not used on a daily basis and alternate locations are readily available. The major dive charter operators directly affected by this regulation were personally contacted by the project officer and offered no objection to the regulation. Since the impact of these

regulations are expected to be minimal, the Coast Guard certifies that, they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, subpart 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.1401 is revised to read as follows:

§ 165.1401 Apra Harbor, Guam—Safety Zones.

(a) The following is designated as Safety Zone A—The waters of the Pacific Ocean and Apra Outer Harbor encompassed within an arc of 725 yards radius centered at the center of Wharf H. (Located at 13°27'47"N and 144°39'01.9"E. Based on World Geodetic System 1984 Datum)

(b) The following is designated Safety Zone B—The waters of Apra Outer Harbor encompassed within an arc of 680 yards radius centered at the center of Naval Wharf Kilo. (Located at 13°26'43"N, 144°37'46.7"E. Based on World Geodetic system 1984 Datum)

(c) Special regulations. (1) Section 165.23 does not apply to Safety Zone A and/or Safety Zone B, except when Wharf H and/or Naval Wharf Kilo, or a vessel berthed at Wharf H and/or Naval Wharf Kilo, is displaying a red (BRAVO) flag by day or a red light by night.

(2) In accordance with the general regulations in 165.23 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port, Guam.

3. A new § 165.1404 is added to read as follows:

§ 165.1404 Apra Harbor, Guam—Security Zone.

(a) The following is designated as Security Zone C—The waters of Apra

Outer Harbor, Guam surrounding Naval Mooring Buoy No. 702 (Located at 13°27'30.1"N and 144°38'12.9"E. Based on World Geodetic System 1984 Datum) and the Maritime Prepositioning ships moored thereto. The security zone will extend 100 yards in all directions around the vessel and its mooring. Additionally, a 50 yard security zone will remain in effect in all directions around buoy No. 702 when no vessel is moored thereto.

(b) In accordance with the general regulations in § 165.33 of this part, entry into Security Zone C is prohibited unless authorized by the Captain of the Port, Guam.

Dated: April 20, 1990.

V. O. Eschenburg,

Captain, U.S. Coast Guard, Captain of the Port, Guam.

[FR Doc. 90-10363 Filed 5-3-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3762-4]

Approval and Promulgation of Implementation Plans; Tennessee; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects two errors in the Code of Federal Regulations for Tennessee. An amendment to § 52.2222 at 54 FR 4021 on January 27, 1989, added paragraph (C). This addition should be paragraph (c). The other error appeared in an amendment to § 52.2220 at 53 FR 39742 on October 12, 1988. Paragraph (c)(91) of § 52.2220, subparagraph (iii) should be (ii).

EFFECTIVE DATE: This action is effective May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Richard A. Schutt at 404/347-2864 (FTS 257-2864).

Dated: April 23, 1990.

Joe R. Franzmathes,
Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

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

Authority: 42 U.S.C. 7401-7642.

§ 52.2220 [Amended]

2. In § 52.2220, paragraph (c)(91)(iii) is redesignated as (c)(91)(ii).

§ 52.2222 [Amended]

3. In § 52.2222 paragraph (C) is redesignated as (c).

[FR Doc. 90-10353 Filed 5-3-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[FRL-3762-3]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Technical amendment.

SUMMARY: On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA), EPA promulgated a series of criteria for listing wastes as hazardous. The Agency is today conforming the language of the regulation to reflect the Agency's intent and consistent interpretation.

EFFECTIVE DATE: May 4, 1990.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information, contact Mr. William A. Collins, Office of Solid Wastes (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4791.

SUPPLEMENTARY INFORMATION: On May 19, 1980, EPA promulgated final and interim final regulations implementing section 3001 of the Resource Conservation and Recovery Act (RCRA). Section 3001(a), among other provisions, requires the Agency to promulgate criteria for listing wastes as hazardous. The Agency's regulations to implement this section of the Act is codified at 40 CFR 261.11.

The provision involved in this technical correction is § 261.11(a)(3), the criteria for listing toxic wastes. This provision states that the Agency will list a waste as toxic if the waste contains any toxic constituent listed in appendix VIII of part 261 unless, after considering a series of enumerated factors, the Administrator determines that the waste is not capable of posing a substantial hazard to human health and the environment even if managed improperly. Appendix VIII contains a

list of substances shown in scientific studies to be toxic, carcinogenic, mutagenic or teratogenic. The factors set out in the rule—drawn for the most part from sections 1004(5) and 3001(a) of RCRA—include the nature of the toxic constituents, the concentration of toxic constituents in the waste, the migratory potential of the constituents and their mobility and persistence after migrating from a waste. Other factors are the plausible ways the waste could be mismanaged, the quantity of waste generated, damage incidents caused by past management of the waste, and action by other regulatory agencies regarding the waste or waste constituents.

In practice, the Agency has always evaluated the waste factors (or those factors that are relevant) in its specific listing actions at issue, and then made judgments as to whether wastes containing an Appendix VIII constituent is capable of causing substantial harm if mismanaged. (See Listing Background Documents of: May 19, 1980, 45 FR 33084-33137; November 12, 1980, 45 FR 74884-74894; November 25, 1980, 45 FR 78524-78550; January 16, 1981, 46 FR 4614-4620; May 29, 1981, 46 FR 27473-27480; May 10, 1984, 49 FR 19922-19923; January 14, 1985, 50 FR 1978-2006; October 23, 1985, 50 FR 42936-42943; December 31, 1985, 50 FR 53315-53320; February 13, 1986, 51 FR 5327-5331; February 25, 1986, 51 FR 6537-6542; May 28, 1986, 51 FR 19320-19322; September 13, 1988, 53 FR 35412-35421; October 6, 1989, 54 FR 41402-41408; and December 11, 1989, 54 FR 50968-50979 (explaining the basis for listing the waste in 40 CFR 261.31, 261.32, and 261.33 based upon the criteria for listing in § 261.11(a)(3)). As written, however, the rule could mistakenly be read to imply that wastes are hazardous if they contain an appendix VIII constituent (conceivably in any concentration), without considering the enumerated factors which serve only to rebut the presumption.

As stated above, the Agency has never applied the rule in this way, and has always interpreted the rule to require consideration of the appropriate factors in determining whether to list wastes: By appropriate factors, the Agency does not mean that each factor enumerated in § 261.11(a)(3) must be considered in a particular case. The Agency therefore believes that the wording of the rule should be corrected to reflect the proper standard established by the rule. Accordingly, the Agency is amending § 261.11(a)(3) to state that wastes will be listed as

hazardous if they contain one or more appendix VIII constituents and after considering the enumerated factors, the Administrator determines that the waste is capable of posing substantial harm if managed improperly. This change in language is not intended to and will not affect existing Agency listing practices based upon the Agency's consistent interpretation of the 1980 regulatory language. Thus, EPA has and will continue to provide more or less detailed consideration of the factors, as well as to consider factors jointly, as appropriate.

Because this action is a technical clarification of an existing rule, EPA believes that notice and comment requirements do not apply to and are unnecessary for today's action. Any regulatory action was achieved by the 1980 rule and by the numerous listings providing EPA's interpretation of the rule. In any event, EPA believes that good cause exists for today's changes under section 553(b)(3)(B) of the Administrative Procedures Act because this is a technical clarification (or at most an interpretive rule).

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: April 26, 1990.

Henry L. Longest II,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. In § 261.11, paragraph (a)(3) introductory text is revised to read as follows:

§ 261.11 Criteria for listing hazardous waste.

(a) * * *

(3) It contains any of the toxic constituents listed in Appendix VIII and, after considering the following factors, the Administrator concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

* * * * *
[FR Doc. 90-10326 Filed 5-3-90; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 235

RIN 0970-AA56

Pre-Eligibility Fraud Detection Measures; State Agency Requirements

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 605 of the Family Support Act of 1988, Public Law 100-485, which requires State agencies to establish pre-eligibility fraud detection measures.

EFFECTIVE DATE: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mark Ragan, Acting Director, Division of Policy, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade SW., Washington, DC 20447, telephone (202) 225-5116.

SUPPLEMENTARY INFORMATION: The Family Support Administration (FSA) published an interim final rule on April 20, 1989 (54 FR 15944-15945) to implement the newly added statutory provisions at section 402(a)(45) of the Social Security Act (the Act) which require State agencies to institute pre-eligibility fraud detection measures. This amendment to the Act was made by section 605 of the Family Support Act of 1988.

Federal policy has long recognized that the initial eligibility determination process requires State agency staff to thoroughly question and verify an applicant's statements concerning the family's eligibility for AFDC and the amount of payment (see 38 FR 22007, dated August 15, 1973). An integral facet of this process is the utilization of "verification measures" where the worker confirms the applicant's statements by examining documents in his or her possession or by obtaining information from appropriate third-party sources. We believe that Congress recognized the importance of these verification measures and intended State agencies to take a critical look at current measures and enhance their effectiveness in detecting fraudulent applications as appropriate. Examples of such enhanced verification measures include automated data matches other than those utilized in the Income Eligibility Verification System (IEVS), error prone profiles, mandatory home visits, collateral contacts, and credit bureau inquiries.

In order to implement this statutory provision, we are requiring that the State plan be amended to contain a description of the various verification measures used to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid. This description should include long-established measures routinely performed by workers, periodic support activities such as training on investigative interviewing techniques, and any newly established initiatives designed to be performed by or in support of staff responsible for pre-eligibility fraud detection.

Furthermore, we believe that to ensure the effectiveness of the pre-eligibility verification process, State agencies must routinely monitor, evaluate, and refine their verification measures as appropriate. We are therefore requiring that States perform an annual evaluation of their verification measures and submit needed changes as amendments to their State plans. Additionally, we are requiring that an annual report of the evaluation be submitted to the FSA Regional Office on February 15 and is to cover the preceding Federal fiscal year.

The rule requires that costs attributed to such verification measures will qualify for Federal matching as administrative costs at the 50 percent Federal matching rate.

Discussion of Comments

A 60-day comment period was provided in the April 20, 1989, interim final rule. A total of 15 comments were received from 10 State agencies, one county agency, two State investigative organizations, two investigative associations, and one from a Congressman who enclosed a duplicate comment already received from one of the investigative associations. These comments are discussed below:

Comment: Three State agencies, two State investigative organizations, and two investigative associations commented that activities associated with pre-eligibility fraud detection should be Federally matched at the enhanced rate of 75 percent.

Response: Section 605 of the Family Support Act of 1988, Public Law 100-485, amended section 402 of the Social Security Act by adding subsection (a)(45) to require pre-eligibility fraud detection measures; however, section 403 of the Social Security Act, which contains the matching provisions governing the AFDC program, was not amended to provide enhanced Federal matching for section 605 activities. Consequently, Federal matching is available at the 50 percent matching rate

set forth in section 403(a)(3)(D) of the Act.

It should be noted that enhanced funding at the 75 percent rate is available for costs directly attributable to fraud investigations, prosecutions, collections, and administrative hearings to operate an AFDC Optional Fraud Control Program pursuant to section 416 of the Act. A complete discussion of Federal funding related to the Optional Fraud Control Program will be contained in a forthcoming Notice of Proposed Rulemaking.

Comment: Seven State agencies and one county agency expressed opposition to the requirements for an annual evaluation of the effectiveness of pre-eligibility verification measures. The evaluation was viewed either as a duplication of corrective action activities currently being performed as part of the quality control system or simply burdensome.

Response: In view of the fact that a number of States include a discussion of pre-eligibility verification measures in their corrective action plans for quality control purposes, we have modified the annual report requirement to minimize the reporting burden and eliminate unnecessary duplication. Specifically, the reporting period and submittal date have been revised to be consistent with the corrective action plan requirements at 45 CFR 205.40. In addition, the due date for the annual pre-eligibility report will be February 15 and is to cover the preceding Federal fiscal year.

These changes will allow States to utilize relevant information and data gathered during their corrective action efforts, to aid in the preparation of the pre-eligibility report. The aforementioned revision will lessen the reporting burden for those States that currently evaluate their pre-eligibility verification measures during the corrective action process. Furthermore, we believe that the value of these reports—i.e., providing us with significant information on fraud detection initiatives that can be shared with other States and interested parties—justifies any residual burden.

Comment: Two State agencies indicated that pre-eligibility fraud detection measures should not be included in a State plan nor should changes in such measures necessitate amending a State plan.

Response: Section 402(a) of the Social Security Act sets forth various AFDC State plan requirements. The Family Support Act of 1988 amended this section by mandating that the State plan provide for "appropriate measures to detect fraudulent applications for aid to

families with dependent children prior to the establishment of eligibility for such aid." Because the statute mandates pre-eligibility fraud detection as a State plan requirement, the measures to be utilized by a State are to be included in its State plan.

Comment: Three State agencies expressed concern because the interim final rule does not differentiate between the normal eligibility determination process and the pre-eligibility fraud detection program. This failure to differentiate between "eligibility verification" and "fraud detection" was viewed as minimizing the important role performed by fraud investigators in identifying intentional program violations during the initial application process.

Response: The term "verification measures" as contained in the interim rule was broadly defined so as to allow a range of fraud detection activities that could be tailored to the needs and circumstances of each State. Moreover, because similar verification measures are often performed by both intake eligibility workers and fraud investigators, we believe that it would be impractical to differentiate between actions that must be employed during the initial eligibility determination and pre-eligibility fraud detection processes. Our intention was to establish a basic definition of "verification measures" that would be applicable to both intake eligibility workers and fraud investigators and thereby allow States the latitude to integrate the expertise of such staff when formulating their fraud detection programs. However, in consideration of these comments, we have clarified the regulation to specifically provide that "verification measures" can also be performed by fraud personnel assigned to the initial application unit to investigate applicants suspected of committing fraud.

Comment: One State agency asked if the 45-day standard of promptness could be waived for applications subject to pre-eligibility fraud detection procedures.

Response: There is nothing in section 605 or its legislative history that suggests that Congress intended to change the current 45 day standard of promptness for AFDC applications. Moreover, we are unaware of any data that indicates that such a change is necessary based on operational experience. Accordingly, we have not made any change in the standard of promptness.

Comment: One State agency believed that these rules should have been modeled on the Orange County Early Welfare Fraud Detection/Prevention

Program. By not doing so, the State agency felt that our rules failed to implement the intent of the statute.

Response: The Orange County Early Welfare Fraud Detection/Prevention Program involves the referral of initial application cases to a fraud investigative unit based on the eligibility worker's suspicion that an applicant may have committed fraud. The assigned fraud investigator typically investigates the suspicious application within 48 hours and subsequently forwards the results to the eligibility worker. This investigative process is performed within the 45 day standard of promptness for AFDC applications.

Neither the Family Support Act of 1988 nor its legislative history mentions or otherwise requires the national implementation of the Orange County Early Welfare Fraud Detection/Prevention Program. On the other hand, there is nothing which precludes States from incorporating appropriate features of the Orange County initiative into their own pre-eligibility fraud detection programs. For example, the assignment of fraud personnel to investigate and verify statements made by applicants suspected of committing fraud is an appropriate and effective pre-eligibility fraud detection practice which States may wish to implement. We would be willing to consider other aspects of the Orange County initiative that States submit as part of any proposed plan amendments.

Regulatory Procedures

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because this regulation will not: (1) Have an annual effect on the economy of \$100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

Section 235.111(c) of this final rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). OMB has reviewed and

approved these information collection requirements (OMB approval number 0970-0093).

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small business. The primary impact of this final rule is on State governments and individuals. Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments-Maintenance Assistance)

List of Subjects in 45 CFR Part 235

Aid to families with dependent children, Fraud, Grant programs—social programs, Public assistance programs.

Dated: October 26, 1989.

Eunice S. Thomas,

Acting Assistant Secretary for Family Support.

Approved: January 2, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Editorial Note: This document was received by the Office of the Federal Register on April 30, 1990.

Part 235 of chapter II, title 45 of the Code of Federal Regulations, is amended as set forth below:

PART 235—[AMENDED]

1. The authority citation for part 235 is revised to read as follows:

Authority: Sections 2, 3, 402, 403, 1002, 1003, 1402, 1403, 1602, and 1603 of the Social Security Act (42 U.S.C. 302, 303, 602, 603, 1202, 1203, 1302, 1352, 1353, 1382 (Note), 1383 (Note)), and Part XXIII of Pub. L. 97-35, 45 Stat. 843.

2. New §235.111 is added to read as follows:

§235.111 Pre-eligibility fraud detection measures.

(a) State plan requirement. A State plan under title IV, part A of the Social Security Act must contain a description of the verification measures to detect fraudulent applications for AFDC prior to the establishment of eligibility for such aid.

(b) *Definition.* For purposes of this section, "verification measures" are actions taken by a State agency (including actions taken by fraud personnel assigned to the initial

application unit to investigate applicants suspected of committing fraud):

(1) To confirm information provided by an applicant to support his or her eligibility for AFDC; and

(2) To confirm information provided by an applicant that is relevant in determining the amount of the assistance payment.

Such actions involve the examination of supporting documentation in the applicant's possession and obtaining additional information, when necessary, from appropriate third party sources; also included are any periodic support activities taken by the State agency to enhance these actions. Examples of such measures include but are not limited to: Automated data matches to establish the accuracy of statements on the application; use of error prone profiles; home visits or collateral contacts; credit bureau inquiries; training on investigative interviewing techniques.

(c) *Annual evaluation.* A State agency shall make a written evaluation for each Federal fiscal year of the effectiveness of its verification measures, submit a copy of the evaluation to the FSA Regional Office by February 15 of the following Federal fiscal year, and submit any appropriate amendments to its title IV-A State plan. The evaluation must include an assessment of verification measures such as home visits, credit bureau inquiries, data matches with entitlement programs, in addition to those included in the State's Income and Eligibility Verification System (IEVS), or other similar measures implemented by States. Information and data gathered in connection with a corrective action plan prepared pursuant to 45 CFR 205.40 may be utilized in preparing this evaluation.

(d) *Federal financial participation.* Verification measures to detect fraudulent applications will be matched as administrative costs at a 50 percent rate.

[FR Doc. 90-10352 Filed 5-3-90; 8:45 am]

BILLING CODE 4150-04-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Part No. MC-19 (Sub-No. 41)]

Practices of Motor Common Carriers of Household Goods (Limitations of Liability)

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: After review of the comments of the parties to this proceeding, we adopt, with certain modifications, the revision of our rule at 49 CFR part 1056 proposed in our Notice of Proposed Rulemaking published November 6, 1989, 54 FR 46635. The revised rule permits household goods carriers, subject to the jurisdiction of the Commission, to limit their liability for items of extraordinary value (defined as articles with a value that exceeds \$100.00 per pound, per article) unless the shipper identifies such articles in writing to the carrier as items that will be included in the shipment. We believe that the rule change, as modified, will assist consumers in recovering for loss of or damage to their articles having extraordinary value. Further, household goods carriers will be able to identify such articles and take steps to better protect them against loss or damage and thereby avoid costly disputes and litigation to the benefit of themselves and their customers.

EFFECTIVE DATE: The revised rule is effective June 3, 1990.

FOR FURTHER INFORMATION CONTACT:

Heber P. Hardy, (202) 275-7148

or

John W. Fristoe, (202) 275-7844 [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 pickup in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721].

Energy and Environmental Considerations

This action does not affect significantly either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We certify that the adoption of this final rule will not have a significant impact on a substantial number of small entities. The adopted rule is permissive and if used by household goods carriers will help them identify articles of extraordinary value and take steps to better protect them against loss or damage and thereby avoid costly disputes and litigation to the benefit of themselves and their customers.

List of Subjects in 49 CFR Part 1056

Consumer protection, Moving of household goods.

Decided: April 26, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1056 of the Code of Federal Regulations is amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

§ 1056.12 [Amended]

2. Section 1056.12 is amended in paragraph (b) introductory text, by substituting the word "instances" for the word "instance" in the last line of the introductory text and by adding a new paragraph (b)(2) to read as follows:

§ 1056.12 Liability of carriers.

* * * * *

(b) * * *

(2) When a shipment is released to a value greater than sixty (60) cents per pound, per article, liability for loss or damage may be limited to \$100 per pound, per article (based upon the actual article weight), for any article included in the shipment that exceeds \$100 per pound, per article, in value, unless the shipper specifically identifies in writing to the carrier that the article will be included in the shipment.

* * * * *

[FR Doc. 90-10400 Filed 5-3-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 628

[Docket No. 900110-0077]

RIN 0648-AC51

Atlantic Bluefish Fishery

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

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement conservation and management measures as prescribed in the Fishery Management Plan for the Bluefish Fishery (FMP). This rule establishes: (1) Permits for the sale of

bluefish; (2) an initial daily possession limit of ten bluefish for fishermen without a commercial permit; and (3) a mechanism for the imposition of restrictions on the commercial fishery, including closure, if certain catch levels are met. The intended effect of the regulations is to conserve the bluefish resource along the Atlantic coast.

EFFECTIVE DATE: May 31, 1990.

ADDRESSES: Copies of the environmental assessment and the regulatory impact review are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115 Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:

Background

The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) in consultation with the New England and South Atlantic Fishery Management Councils. This FMP represents an agreement between the Fishery Management Councils and the Commission to develop jointly a bluefish management plan combining compatible management measures that will be implemented in both state and Federal waters. This cooperative venture represents a new approach for managing interjurisdictional fisheries. A notice of availability for the proposed FMP was published in the *Federal Register* on December 15, 1989 (54 FR 51437), and the proposed rule on January 29, 1990 (55 FR 2853). The FMP initiates management of the bluefish (*Pomatomus saltatrix*) fishery pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.* The management unit is Atlantic bluefish in U.S. waters from the eastern coast of Florida to Maine.

The major goal of the FMP is to conserve the bluefish resource along the Atlantic coast. Five major objectives have been adopted to achieve this goal:

1. Increase understanding of the stock and the fishery;
2. Provide the highest availability of bluefish to U.S. fishermen while maintaining, within limits, traditional uses of bluefish (defined as the commercial fishery not exceeding 20 percent of the total catch);
3. Provide for cooperation among the coastal states, the various regional marine fishery management councils, and Federal agencies involved to

enhance the management of bluefish from Florida to Maine;

4. Prevent recruitment overfishing; and

5. Reduce the waste in both the commercial and recreational fisheries.

The purpose of the FMP is to address current fishery problems and problems that could occur if the bluefish fishery were to expand significantly or the bluefish resource were to decline. Thus, this FMP is intended to avert potential, as well as correct current, management problems.

Comments and Responses

Written comments were submitted by the National Coalition for Marine Conservation; Pennsylvania State Conference of the National Association for the Advancement of Colored People (NAACP); Hudson River Fishermen's Association, New Jersey Chapter; Jersey Coast Anglers Association; The Sounds Conservancy, Inc.; United Boatmen of New Jersey and New York (United Boatmen); Asbury Park Fishing Club; New Jersey Striped Bass Fisherman's Association; National Party Boat Owners Alliance, Inc.; The Fisherman; Asbury Park Press; Ocean Sport Fishing; Raymond Bogan (Farley & Hrymack, Attorneys At Law); New Jersey State Senator Joseph A. Palaia; New England Fishery Management Council; Congressman Christopher H. Smith; New York State Assemblyman Albert Vann; New York Division of Coastal Resources and Waterfront Revitalization; the Council; Connecticut Sportfishing Alliance, Inc.; National Fisheries Institute; Florida Marine Fisheries Commission; and 176 individuals from the States of New Jersey (132), New York (23), Pennsylvania (11), New Hampshire (2), Florida (4), Maine (1), North Carolina (1), and unknown (2). United Boatmen submitted two petitions, (one for 718 individuals and the other for 61 individuals). A petition signed by 50 individuals from Monmouth and Ocean Counties, New Jersey was submitted as well.

Comment: The Council cited various inconsistencies between the FMP and the proposed rule. These inconsistencies dealt with the definition of a runaround gillnet, requirements under § 628.21(a) (4) for commingling of catch, the deletion in the proposed rule under § 628.22 of the consideration "of the most recent stock assessment information", and the factors considered in § 628.22 in determining commercial controls on the fishery.

Response: The inconsistencies between the Council's version of the proposed rule and the published

proposed rule are corrected in the final rule. The changes are noted below.

Comment: The Pennsylvania State Conference of the NAACP; the Asbury Park Fishing Club; the New Jersey Striped Bass Fisherman's Association; United Boatmen (including the two petitions totaling 779 signatures); the National Party Boat Alliance, Inc.; New York State Assemblyman Albert Vann; Congressman Christopher H. Smith; New Jersey State Senator Joseph A. Palaia; The Fisherman; the Asbury Park Press; Ocean Sport Fishing; Raymond Bogan; Connecticut Sportfishing Alliance, Inc.; the petition signed by 50 individuals from Monmouth and Ocean Counties, New Jersey; and 167 individuals stated their opposition to the ten bluefish daily possession limit for recreational fishermen.

Response: The purpose of the possession limit is to impose meaningful controls to prevent overfishing in the recreational sector which makes up the majority of the landings. Based upon information derived from the Marine Recreational Fishery Statistics Survey, a ten bluefish daily possession limit will impact approximately 7.3 percent of the successful angling trips. The daily possession limit could be adjusted either higher or lower based upon stock abundance. If it is determined that abundance is high, and the possession limit is raised, the impact of the daily possession limit will be negligible. Individuals desiring to catch more than the regulated daily possession limit have the option of obtaining a Federal permit or a commercial permit issued by a state.

Comment: The Asbury Park Fishing Club; United Boatmen; National Party Boat Owners Alliance, Inc.; The Fisherman; Connecticut Sportfishing Alliance, Inc.; and 143 individuals stated their opposition to the expansion of the commercial fishery by raising the allowed landings to 20 percent of the total.

Response: It is necessary to allow the expansion of the commercial fishery due to the additional number of anglers who will obtain a commercial permit. This will cause a redistribution of part of the recreational landings to the commercial sector. Controls may be placed on the commercial fishery once the commercial landings reach 17 percent of the total projected landings to prevent the 20 percent from being exceeded. The allocation between the recreational and commercial fisheries will insure that the traditional uses and fisheries for bluefish are preserved.

Comment: United Boatmen; Raymond Bogan; National Fisheries Institute; and

46 individuals stated that the FMP is not a valid conservation effort.

Response: The FMP will provide uniform management throughout the Atlantic Exclusive Economic Zone (EEZ) by complementing the ASMFC's Plan (Plan), which a majority of states are expected to implement. The Plan initiates management measures for both the recreational and commercial fisheries and will prevent any declines in stock abundance that may occur for whatever reason. Recent year class recruitment has been quite low, with the lowest ever recorded in 1988.

Comment: The Pennsylvania State Conference of the NAACP; the New Jersey Striped Bass Fisherman's Association; United Boatmen; New York State Assemblyman Albert Vann; New Jersey State Senator Joseph A. Palaia; The Fisherman; the Asbury Park Press; Raymond Bogan; and five individuals stated that the FMP, and specifically the ten fish daily possession limit, discriminates against persons of low socioeconomic status.

Response: The FMP allows individuals to exceed the ten fish daily possession limit. This may be done by obtaining a Federal permit or by using a commercial permit issued by a state. The Council adopted this latter option in order to avoid duplication and unnecessary costs. Individuals are not required to obtain a state commercial permit unless they intend to sell their catch, and the state where they intend to sell their catch requires such a permit. The FMP does not intrude upon state permit requirements. If individuals want to exceed the daily possession limit, but not sell their catch, they can apply for a Federal permit. The cost of a Federal permit is limited to the administrative costs of its issuance. These costs will be nominal; thus the Federal permit can be obtained by anyone who can afford the cost of a bluefish fishing trip. This opportunity would be subject to restrictions that might be adopted in the future to keep commercial landings within 20 percent of the total catch.

Comment: Congressman Christopher H. Smith; the National Party Boat Owners Alliance, Inc.; Connecticut Sportfishing Alliance, Inc.; and four individuals stated that the FMP discriminates against the party/charter fishing boats.

Response: The FMP implements no measures that directly restrict party/charter boats. The ten fish daily possession limit applies to all recreational anglers fishing in the EEZ, without regard to fishing mode. Patrons of party/charter boats may obtain a commercial permit to exceed the possession limit provided they keep

their catch separate from other recreational anglers on board the vessel.

Comment: The Hudson River Fishermen's Association, New Jersey Chapter; the New England Fishery Management Council; the Florida Marine Fisheries Commission; and five individuals supported the FMP as written.

Response: The FMP is implemented.

Comment: One commenter supported the proposed bluefish FMP, but wants it made effective on September 1 of each year so it would be more acceptable to the vast majority of anglers.

Response: A delayed implementation date each year would have a deleterious effect on the conservation benefit derived from implementation of the FMP. Approximately 60 to 65 percent of the recreational fishery is landed between January and August, while the commercial catch for the same time period is approximately 64 percent of the total. A measure that would control a small proportion of the landings would raise serious overfishing concerns, especially in the first year of implementation, and could render the FMP unapprovable.

Comment: The National Coalition for Marine Conservation supported the bluefish FMP, but believes the commercial allocation of 20 percent is too high and should be reduced to 15 percent.

Response: The 20 percent cap on the commercial fishery will allow the commercial fishery to expand due to the additional anglers obtaining commercial permits. It will provide a cushion from fluctuations in the recreational catch which would have a direct impact on the commercial fishery. If the commercial allocation were set at 15 percent, immediate gear restrictions might have to apply to the expanded commercial fishery from the additional anglers who obtain a commercial permit.

Comment: The Sounds Conservancy, Inc., supports the bluefish FMP, but believes that a ten fish daily possession limit is excessive and that a five fish daily possession limit is more than sufficient for most angler needs.

Response: The ten fish daily possession limit will cap the fishing mortality rate at current levels. It recognizes the variations in size and catch of bluefish along the Atlantic coast. It was adopted as a compromise that will still have a benefit for the resource. Individual states may implement more restrictive management measures which the FMP encourages and supports.

Comment: The N.Y. Division of Coastal Resources and Waterfront Revitalization supports the bluefish

FMP, but recommends: (1) that the basis for determining the 20 percent commercial allocation include an analysis of the commercial hook and line fishery in terms of the amount of landings made by individuals who are not full-time fishermen. This percentage should be deducted from the total reported commercial landings. This action may provide a better measurement of the true full-time commercial fishery, and (2) that the fee for the Federal permit be made compatible with the commercial fishing license fees of the affected states.

Response: (1) The 20 percent commercial allocation has already taken this group into consideration. The 20 percent commercial allocation was developed with the expectation that there would be growth from the additional anglers obtaining commercial permits. These anglers would most likely be part-time fishermen. Removal of this group from the determination of the commercial share would require that the commercial allocation be lowered. The analysis for determining whether commercial controls are necessary will take into account all relevant factors.

(2) The Magnuson-Act specifies that any fees charged for a Federal permit be determined by the administrative costs in issuing the permit. The Magnuson Act does not allow for fees to be charged on the basis of similar fees charged by the states. The FMP imposes no restrictions on what the states can charge for permits issued for the bluefish fishery.

Comment: The Jersey Coast Anglers Association stated that the FMP does not address waste in the commercial fishery while cutting back the recreational fishery.

Response: The issue of waste in the commercial sector was not addressed by the FMP. Discards in commercial fisheries in general, and their contribution to fishing mortality continue to be a source of concern.

The FMP applies measures appropriate to each sector of the bluefish fishery. There are relatively few fishermen who presently exceed the ten fish daily possession limit. The FMP allows these fishermen to continue this practice by obtaining a Federal permit or using their state permit. Since controls on the commercial sector may not be imposed for several years, these recreational fishermen who now fall within the commercial sector will not have their catch allowance reduced.

Comments: Raymond Bogan stated that the FMP violates the national standards for fishery conservation and management under the Magnuson Act, the Act's stated purpose and goals, and

violates the policy of the Magnuson Act under 16 U.S.C. 1801(c)(3).

Response: Formal review of the FMP has determined that it is consistent with the Magnuson Act and other applicable laws. The FMP meets its stated goals and will provide a conservation benefit for the bluefish stock.

Comments: The National Fisheries Institute commented that the bluefish management measures are inequitable by imposing harvesting constraints which are unrelated to the health of the fishery and by holding the commercial fishery responsible for changes beyond its control.

Response: The health of this valuable resource is not as robust as it was several years ago, as evidenced by low levels of recent year class recruitment. The present daily possession limit caps mortality at existing levels. The FMP establishes a proactive management regime that is directly responsive to the status of the resource by allowing the daily possession limit to be adjusted upward or downward, and commercial restraints to be imposed and relaxed as the abundance of the resource warrants.

The allocation scheme is not inequitable to the commercial or recreational sector, as the modest expansion of the average commercial percentage of the overall catch from 12-20 percent is to accommodate the influx of recreational fishermen who want to exceed the daily possession limit. This increase should also act as a buffer against shifts in the recreational catch which could have unwarranted negative impact on the commercial sector. This is a reasonable expectation since the market for bluefish is not likely to expand significantly.

The fact that the commercial sector is impacted by circumstances beyond its control is a result of the legitimate exercise of the Council's discretion to maintain the traditional uses of bluefish between the recreational and commercial sectors of the fishery. The main factor causing the adjustment to both sectors of the fishery, and which is beyond the control of either, is the abundance of the resource over time. The objective of the FMP is to maintain the highest availability of bluefish to both recreational and commercial fishermen through the management measures it imposes.

Changes from the Proposed Rule

In response to comments received, the following changes are made from the proposed rule.

In § 628.2, the definition for *runaround gillnet* is corrected to include "¼ of the length".

In § 628.21(a)(4), the first sentence "Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may not be commingled." is changed to "Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may be commingled."

In § 628.21(b) (1), the second sentence is revised by the addition of "together with the basis for such adjustment".

In § 628.22(a), the paragraph is revised by deleting "The Committee will review bluefish catch statistics prior to August 15th of each year. This review, combined with considerations based on a 3-year moving average of both the commercial landings and bluefish catch (recreational catch and commercial landings), will be used by the Committee to project the commercial catch for the next fishing year. This projection shall be reported to the Council and the Commission." The paragraph is replaced with "The Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Committee will report to the Council and the Commission."

In § 628.22(b), the phrase "based on the average catch for the previous three years" is deleted from the second and third sentences.

Classification

The Regional Director determined that this FMP is necessary for the conservation and management of the bluefish fishery, and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for the FMP that discusses the impact on the environment as a result of this rule. Based on this EA, the Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment and finding of no significant impact from the Council (see ADDRESSES).

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review which demonstrates positive net short-term and long-term economic benefits to the fishery under these management measures.

The General Counsel of the Department of Commerce certified to the Small Business Administration that

this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Florida. Georgia does not have an approved coastal zone program. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act on July 7, 1989. As of October 30, 1989, all of the States had concurred with the Council's finding except Rhode Island, Maryland, Virginia, and North Carolina, which did not respond within the statutory time period.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The requirement for an annual Federal Fisheries Permit contained in § 628.4 has been approved under OMB Control #0648-0237. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to NOAA, National Marine Fisheries Service—Permit Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0648-0237), Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12812.

List of Subjects in 50 CFR Part 628

Administrative practice and procedure, Fish, Fisheries, Vessel permits and fees.

Dated: April 30, 1990.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 628 is added as follows:

PART 628—ATLANTIC BLUEFISH FISHERY

Subpart A—General Provisions

- Sec.
- 628.1 Purpose and scope.
- 628.2 Definitions.
- 628.3 Relation to other laws.
- 628.4 Permits and fees.
- 628.5 Prohibitions.
- 628.6 Facilitation of enforcement.
- 628.7 Penalties.

Subpart B—Management Measures

- 628.20 Fishing year.
- 628.21 Possession limit.
- 628.22 Catch monitoring, commercial controls, and gear restrictions.
- 628.23 Closure of fishery.

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

Subpart A—General Provisions

§ 628.1 Purpose and scope.

The regulations in this part implement the Fishery Management Plan for the Bluefish Fishery, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission in cooperation with the New England and South Atlantic Fishery Management Councils. These regulations govern the conservation and management of Atlantic bluefish in the EEZ.

§ 628.2 Definitions.

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bluefish means *Pomatomus saltatrix*. Bluefish, for the purposes of this part, refers to bluefish in the Atlantic EEZ from the eastern coast of Florida to Maine.

Charter or party boat means any vessel that carries passengers for hire to engage in fishing.

Commission means the Atlantic States Marine Fisheries Commission.

Committee means the Bluefish FMP Review and Monitoring Committee of the Council.

Council means the Mid-Atlantic Fishery Management Council.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Bluefish Fishery and any amendments thereto.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port

and ending when the vessel returns to port.

NEFC means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

Pair trawl means a net attached to and towed by two vessels.

Person who receives bluefish for commercial purposes means any person (excluding representatives of governmental agencies) engaged in the sale, barter, or trade of bluefish received from a fisherman, or one who transports bluefish from a fisherman.

Purse seine means a floated and weighted net that is closed by means of a draw string threaded through rings attached to the bottom of the net.

Regional Director means the Director, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, telephone 508-281-9243, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson Act.

Runaround gillnet or encircling gillnet means a rectangular net placed upright in the water column in a circular fashion with an opening equal to or less than $\frac{1}{4}$ the length of the net or with an opening greater than $\frac{1}{4}$ the length of the net if the opening is obstructed in any fashion.

Vessel length means that length specified on State registration or U.S. Coast Guard documentation.

§ 628.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Additional regulations governing fishing for bluefish by foreign vessels in the EEZ are set forth in 50 CFR part 611, subparts A and C.

§ 628.4 Permits and fees.

(a) *General.* (1) Any person selling bluefish harvested in the EEZ must have either a valid permit issued under this part or a valid State of landing permit to sell bluefish.

(2) Any person who applies for a permit under this section, or who uses a valid state permit to sell fish harvested from the EEZ, must agree as a condition of using either permit that his/her bluefish catch and gear (without regard to whether fishing occurs in the EEZ or landward of the EEZ, and without regard to where such bluefish or gear are possessed, taken, or landed) will be subject to all the requirements of this part. All such catch and gear will remain subject to any applicable State or local requirements. If a requirement of this part and a conservation measure required by a state or local law differ, any person issued a permit under this section or using a valid State permit to

sell bluefish harvested from the EEZ must comply with the more restrictive requirement.

(b) *Application.* (1) An application for a permit under this part must be signed by the applicant on an appropriate form obtained from the Regional Director and submitted at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all the following information:

- (i) The name, mailing address, including zip code, and telephone number of the applicant;
- (ii) The height, weight, hair color, and eye color of an individual applicant;
- (iii) If the applicant represents a corporation, the certificate of incorporation;

(iv) Percentage of annual income derived from the sale of bluefish; and

(v) Any other information required by the Regional Director.

(3) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 21 days following the date of notification, the application will be discarded.

(4) Any change in the information specified in paragraph (b)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(c) *Fees.* The Regional Director may charge a fee consistent with the Magnuson Act for the issuance of the federal permit.

(d) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(e) *Duration.* A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under 15 CFR part 904.

(f) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit which has been altered, erased, or mutilated is invalid.

(g) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the fishing permit number assigned. An application for a replacement permit will not be considered a new application. The Regional Director may charge a fee consistent with the Magnuson Act for the issuance of the replacement permit.

(h) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the person for which it is issued.

(i) *Display.* A person issued a permit under this section must be able to present the permit for inspection when requested by an authorized officer.

(j) *Suspension and revocation.* Subpart D of 15 CFR part 904 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part.

§ 628.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess in or harvest from the EEZ Atlantic bluefish in excess of the daily possession limit specified in § 628.21, unless that person has a permit meeting the requirements of § 628.4(a);

(b) Possess, have custody or control of, ship, receive, barter, trade, transport, offer for sale, sell, purchase, import, or export any bluefish taken, retained, or landed in violation of the Magnuson Act, or any regulation or permit issued under the Magnuson Act;

(c) Fish under a permit meeting the requirements of § 628.4(a) in violation of a notice of restriction published under § 628.22;

(d) Fish in the EEZ under a permit meeting the requirements of § 628.4(a) during a closure under § 628.23;

(e) Fail to report to the Regional Director within 15 days, any change in the information in the application for a permit under § 628.4;

(f) Fail to present any permit meeting the requirements of § 628.4(a) upon request of an authorized officer;

(g) Sell any Atlantic bluefish harvested from the EEZ unless that person has a permit that meets the requirements of § 628.4(a);

(h) Make any false statement, written or oral, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of any Atlantic bluefish; or

(i) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

§ 628.6 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 628.7 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 628.20 Fishing year.

The fishing year is from January 1 through December 31.

§ 628.21 Possession limit.

(a) *Possession limit.* (1) No person shall possess more than ten bluefish unless he/she has a permit meeting the requirements of § 628.4(a).

(2) Bluefish caught while in possession of a permit meeting the requirements of § 628.4(a) must be kept separate from the pooled catch and in the possession of the permit holder at all times.

(3) If Atlantic bluefish are filleted into two or more sections, such fillets shall be deemed to be whole Atlantic bluefish using a ratio of 1:2 (two fillets to one whole fish). If Atlantic bluefish are filleted into a single (butterfly) fillet, such fillets shall be deemed to be whole Atlantic bluefish.

(4) Atlantic bluefish harvested from party and charter boats or other vessels carrying more than one person may be commingled. Compliance with the daily possession limit will be determined by dividing the number of Atlantic bluefish on board by the number of persons on board, provided, however, that if a person or persons on board are fishing under a permit meeting the requirements of § 628.4(a), his/her catch shall not be counted for determining compliance with the possession limit if it is maintained in the possession of such person(s). If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and/or operator.

(b) *Adjustment of the possession limit.* The Secretary may adjust the possession limit within a range of 0 to 15 Atlantic bluefish based on a recommendation of the Council and Commission. The Secretary will publish a notice of any proposed adjustment, together with the basis for such adjustment in the *Federal Register*. The public may comment on the adjustment for 15 days after the date of the publication. After consideration of public comments, the Secretary may publish a notice of any adjustment in the possession limit in the *Federal Register*.

§ 628.22 Catch monitoring, commercial controls, and gear restrictions.

(a) The Committee will review bluefish catch statistics, a projection of the commercial share for the next fishing year, and the most recent stock assessment prior to August 15th of each year. The Committee will report to the Council and the Commission.

(b) The Council and the Commission will review the report of the Committee. If the report indicates that the commercial catch for the next fishing year will equal or exceed 20 percent of the total catch (recreational catch plus

commercial landings) of Atlantic bluefish, the Council and Commission will propose the commercial controls to be implemented at the start of the upcoming year. If the report indicates that the commercial catch will be greater than 17 percent but less than 20 percent of the total catch of Atlantic bluefish, or that the commercial share for the last full year is 50 percent greater than the previous year's commercial share, the Council and Commission will determine whether commercial controls are necessary. In making such a determination the Council and Commission will consider:

- (1) The most recent catch data;
- (2) Trends in the fishery; and
- (3) Any other relevant factors.

(c) If the catch in the commercial fishery is projected to equal or exceed the 20 percent limit during the upcoming year, then a State allocation system will be implemented. This will entail the use of landings data from the most recent 10-year period for each State, to determine the average percentage of each State's coastwide commercial landings. These percentages will be used to determine the amount of the coastwide quota allocated to each State. Quotas will apply to landings in each State, regardless of where the bluefish were caught.

(d) If whole Atlantic bluefish are processed into fillets at sea, then fillet weight will be converted to whole weight at the State of landing by multiplying fillet weight by 2.5. If whole Atlantic bluefish are headed and gutted at sea, then the conversion is accomplished by multiplying headed/gutted weight by 1.5.

(e) If the Council concludes that the increase in the commercial catch is attributable to the use of purse seines, pair trawls, or encircling (runaround) gillnets, then it will propose restrictions applicable to that gear type. In determining what restrictions are necessary to control the catch of Atlantic bluefish by commercial fishermen using these gear, the Council may consider:

- (1) Trip limits;
- (2) Area closures;
- (3) Banning the use of these gear types; or
- (4) Any other measures it deems appropriate.

(f) The Regional Director will review any gear restriction(s) proposed by the Council. If the Regional Director concurs that the proposed gear restrictions are consistent with the goals and objectives of the FMP, the national standards, and other applicable law, the Regional Director will recommend that the

Secretary publish a notice of the proposed restriction in the **Federal Register** with a 30-day public comment period. After consideration of public comments, the Secretary may publish a notice in the **Federal Register** specifying the final restriction(s).

(g) The Secretary may rescind a notice of restriction in the **Federal Register** if he finds, based on the advice of the Council through the process set forth in paragraphs (a) and (b) of this section, that the restriction is no longer necessary.

§ 628.23 Closure of fishery.

The Regional Director shall close the commercial fishery for Atlantic bluefish in the EEZ if the commercial fisheries for Atlantic bluefish have been closed in all Atlantic coastal States.

[FR Doc 90-10420 Filed 5-1-90; 2:05 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 87

Friday, May 4, 1990

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

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 179

[Notice No. 701; Re: Notice No. 684]

Machine Guns, Destructive Devices, and Certain Other Firearms (89-250F)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Proposed rule: withdrawal.

SUMMARY: ATF is withdrawing from further consideration, at this time, the notice of proposed rulemaking that firearms must attain an age of 50 years before they can be considered for removal from the National Firearms Act as collector's items. ATF is not convinced at this time that 50 years is the appropriate minimum age. ATF will continue to consider applications on a case-by-case basis.

DATES: This withdrawal is effective May 4, 1990.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 789-3026.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1989, ATF issued Notice No. 684 (54 FR 23490), proposing to amend the regulations at 27 CFR 179.25 to specify that the term "date of manufacture" as used in 26 U.S.C. 5845(a) means a date at least 50 years prior to the current date. Section 5845(a), which defines "firearm" for purposes of the National Firearms Act (NFA), states:

The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other

characteristics is primarily a collector's item and is not likely to be used as a weapon.

Thus, the proposed amendment to the regulations would have the effect of requiring that a firearm be at least 50 years old before it is eligible for removal from the provisions of the NFA. The notice stated that the term "date of manufacture" in 26 U.S.C. 5845(a) means a date of manufacture indicative of a device that is primarily a collector's item and that a device of recent manufacture would not be a collector's item.

Comments on Notice No. 684

Seven comments were received in response to Notice No. 684, and all commenters were opposed to the proposed rule for various reasons. Most of the commenters objected to ATF's interpretation of the "date of manufacture" requirement of the statute and ATF's position that all of the criteria of section 5845(a), including "date of manufacture", must be satisfied for a device to be removed from the NFA as a collector's item. The commenters argued that inclusion of the criterion "other characteristics" in the statute indicates that Congress did not intend that all of the statutory criteria be satisfied before removal could be granted; otherwise, unidentified "other characteristics" would not have been included as a criterion. Thus, the commenters contend that collector's items can possess widely varying characteristics and that the criteria specified in section 5845(a), *i.e.*, date of manufacture, value, and design, are merely guidelines which the Secretary may or may not apply in determining whether a firearm should be removed from the scope of the Act.

Conclusion

The ultimate determination under the statute for removing a firearm is whether it is primarily a collector's item and not likely to be used as a weapon. Date of manufacture is one of several criteria to be considered in making this determination. We continue to believe that under the terms of the statute, Congress did not intend new firearms to be removed. Further, we believe that the date of manufacture element permits ATF to require that a firearm has been in existence long enough to demonstrate it is of legitimate interest to collectors. The proposed 50 year rule was intended

to establish a reasonable minimum period of time, which all firearms must meet in order to be eligible for removal.

After reviewing the comments, and upon further analysis, however, we are not convinced at this time that 50 years is the appropriate minimum age. We recognize that a firearm less than 50 years old may nonetheless be primarily a collector's item and not likely to be used as a weapon because of compelling aspects of its value, design and other characteristics. Under these circumstances, we are not convinced that the specific time period proposed, that is, 50 years, is the most appropriate cut off. Moreover, before we can establish such a minimum age, we will need to consider further how the evaluation of a firearm under the remaining criteria of the statute might affect a minimum age requirement. Accordingly, ATF is withdrawing the proposal that firearms must be at least 50 years old to be eligible for removal, and will continue to consider applications on a case-by-case basis.

Drafting Information

The principal author of this document is J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: 26 U.S.C. 7605.

Signed: February 28, 1990.

Stephen E. Higgins,

Director.

Approved: April 16, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-10296 Filed 5-3-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Belt Entry Ventilation Review; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's report of findings and

recommendations regarding belt conveyor entry ventilation in underground coal mines.

DATES: Written comments must be received on or before May 18, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

SUPPLEMENTARY INFORMATION: On August 25, 1989, (54 FR 35356) MSHA announced the availability of a report regarding belt conveyor entry ventilation in underground coal mines. MSHA made the report part of the rulemaking record for the Agency's January 27, 1988, (53 FR 2382) proposed rule revising underground coal mine ventilation standards. The Agency is currently preparing the final rule and believes that public comments on pertinent issues in the report will be useful in drafting the final rule.

In the comments on the report, the Agency received a request for a public hearing on the issues raised as they relate to the ventilation rulemaking. MSHA granted the request and held the hearing on April 18, 1990, in Reston, Virginia. The hearing lasted over 15 hours. The record of this hearing was scheduled to close on May 4, 1990.

Due to the length of the hearing, the transcript of the April 18 proceedings will not be available to the public until May 2, 1990. For this reason, MSHA is extending the close of the record until May 18, 1990. All interested parties must submit comments on or before this date.

Dated: April 30, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-10351 Filed 5-3-90; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Part 75

Safety Standards for Explosives and Blasting; Public Hearing

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of public hearing.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive comments on its proposal to revise existing safety standards for explosives and blasting in underground coal mines. The hearing will be held in Lexington, Kentucky, and

will cover the major issues raised by commenters on the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making late requests. The public hearing will be held on May 30, 1990, beginning at 9 a.m.

ADDRESSES: The hearing will be held in Lexington, Kentucky, in the Atlanta, Chicago, San Francisco room of the Hyatt Regency-Lexington Hotel, 400 Vine Street.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

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

SUPPLEMENTARY INFORMATION: On November 18, 1988, MSHA published a final rule of safety standards for explosives and blasting in underground coal mines in the *Federal Register* (53 FR 46768) which became effective on January 17, 1989. Prior to the effective date of the final rule, MSHA received questions concerning the justification and interpretation of three of these provisions. Consequently, the Agency reevaluated these provisions and published a stay of one standard, 30 CFR 75.1325(b), in the *Federal Register* on January 13, 1989 (54 FR 1360). Questions were also raised concerning application of the "qualified person" provision in 30 CFR 75.1301 and interpretation of the equipment removal requirement in 30 CFR 75.1316. On January 13, 1989, certain of the standards were challenged in the United States Court of Appeals (DC Circuit). On August 1, 1989, the Agency issued a program policy letter on the application of 30 CFR 75.1316. After reviewing all comments, data and field experience, the Agency issued a proposed rule revising several safety standards for explosives and blasting in underground coal mines on December 8, 1989 (54 FR 50714). The comment period, initially scheduled to close February 16, 1990, was extended to March 16, 1990.

The purpose of the public hearing is to receive relevant comments and respond to questions about the proposed rule. The hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in

excluding irrelevant or unduly repetitious material and questions.

The session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of the proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until June 15, 1990.

Issues

Commenters questioned the following provisions in the proposed rule.

Qualified Person

The present standard allows persons to become qualified to use explosives who have experience in mines where production blasting is performed. Based on comments that a large number of coal mines do not perform production blasting but do use explosives routinely for construction purposes in mines, the Agency proposed alternative experience requirements in 30 CFR 75.1301(a)(2) for certification as a qualified person to perform construction blasting. However, under the proposal, a person qualified to perform construction blasting would not be permitted to blast coal for production purposes. Comments subsequent to the proposal state that construction blasting is more complex than production blasting and once qualified, a construction blaster should also be considered qualified for production blasting. Another commenter requested that MSHA strengthen experience requirements for construction blasting. The commenter recommended that to be qualified as a construction blaster the person should have adequate exposure to the actual construction blasting work being performed rather than solely working in a mine where construction blasting is done. The Agency solicits further comment on this issue.

Preparation Before Blasting

This proposal, like the current rule, is intended to address the hazard of accidental initiation of detonators caused by stray electric current originating from contact with energized electric equipment. The proposal would clarify how to measure the 50-foot distance required for removal of mobile electric equipment and deenergization of stationary electric equipment. The proposal would change from "working place or other area where blasting is to be performed" to "boreholes to be loaded with explosives or sites where sheathed explosives units are to be placed and fired". These changes would specify the location from which to measure and explicitly state that this provision also applies to sheathed explosive units. Commenters have expressed a concern that the 50-foot requirement disrupts the mining cycle, especially with regard to the inclusion of trailing cables. Other commenters stated that measuring 50-feet from the "working place" would prevent the blasting cable from crossing over trailing cables when the blaster moves to a safe location that is around at least one corner to fire the round. The agency requests additional information on these points.

Firing Procedure

Section 75.1325(b), originally scheduled to become effective on January 17, 1989, would have allowed firing only one face at a time. On January 13, 1989, MSHNA published a stay of this provision. This action was based on comments from segments of the mining industry who questioned the basis for the prohibition. Under the proposal, up to three faces may be blasted at a time under limited conditions. Each face would have a separate kerf and a total of no more than 20 boreholes connected in a single series would be fired in the round. The proposal would not permit firing more than 20 boreholes in a round when blasting multiple faces unless authorized through a modification of 30 CFR 75.1321 under 30 CFR part 44. Some commenters prefer that requests to fire more than 20 boreholes when blasting multiple faces continue to be addressed through permits from the District Manager rather than through the petition for modification process. Another commenter recommended retaining the requirement limiting blasting to only one face at a time. Further information is sought on these matters.

MSHA will limit testimony at the public hearing to areas concerning the

Agency's proposed revision of these three issues.

Dated: April 30, 1990.

William J. Tattersall,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-10410 Filed 5-3-90; 8:45 am]
BILLING CODE 4510-43-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 90-217; FCC 90-141]

Establishment of Procedures To Provide a Preference to Applicants Proposing an Allocation for New Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Commission's Rules to provide preferential treatment in its licensing process for parties requesting spectrum allocation rule changes associated with the development of new communications services. The objective of this action is to encourage innovators, including individuals, small businesses, and large corporations, to develop new technologies.

DATES: Comments are due June 29, 1990. Reply comments are due July 30, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph McBride or Rodney Small, telephone (202) 653-8108 or (202) 653-8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Proposed Rule in General Docket 90-217, FCC 90-141, Adopted April 12, 1990, and Released April 27, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 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 this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from International

Transcription Service. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. A copy of any comments made should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB number: None.

Title: Establishment of procedures to provide a preference to applicants proposing an allocation for new services (47 CFR 1.402).

Action: Proposed new collection.

Respondents: Business (including small business) and individuals.

Frequency of response: On occasion.

Estimated annual burden: Six responses; 3,000 total hours on respondents; 500 hours each.

Needs and uses: If a final rule is adopted by the Commission in this proceeding, data submitted by respondents will be used to determine whether initiation of rule making proceedings is warranted and, if so, whether respondents are entitled to preferences.

Summary of Proposed Rule

1. In a petition dated July 14, 1989, the Washington Center for Public Policy Research (Washington Center) argued that the Commission's spectrum allocation and licensing processes can inhibit the formation of business capital needed to launch new communication services.¹ In order to spur new services when allocation proceedings are required, Washington Center suggested that the Commission amend its rules to permit a party proposing a new service that requires an allocation of spectrum to accompany its petition for rule making with an application, which could be granted when the allocation proceeding is completed and the rules for the new service are adopted. The Washington Center also proposed to expand the role of experimental authorizations and to set aside spectrum for experimentation.

2. The Commission believes that a "pioneer's preference" is desirable for parties who endeavor to undertake the effort and risk associated with the development of new services and technologies. As noted by Washington

¹ The Commission's Chief Engineer dismissed the Washington Center petition in a letter dated August 9, 1989, and the Washington Center filed an Application for Review of the dismissal with the Commission.

Center, the Commission's spectrum allocation and licensing processes appear to make it more difficult and expensive for an innovator to bring a new communication service to the market. The Commission is concerned that the adverse effects of these processes could have a chilling effect on the development and implementation of new communications services. Innovators of new services must spend a considerable amount of time and money in order to develop these services. The spectrum shortages of today can compound this expense. A preference procedure that would ensure the innovator an opportunity to participate in a service it first sought to develop and would preserve its competitive advantage for a period of time would mitigate the adverse effects of the Commission's processes on investment incentive for innovators.

3. To implement this "pioneer's preference," the Commission is proposing to adopt rules that would, in many instances, guarantee a party first proposing a new service through a spectrum allocation rule change an opportunity to obtain a license to operate in that service. Under this proposal, innovators that have petitioned the Commission for an allocation of spectrum so as to provide for a new service would be permitted to accompany the petition for rule making with an application setting forth a request for the "pioneer's preference" and indicating which geographic areas the innovator intends to serve. The Commission would consider such requests on a case-by-case basis. If the request for a preference is granted, the Commission would defer action on any applications proposing to serve the same geographic area as the petitioner for six months. The Commission believes that this proposal will substantially lessen the increased risk faced by innovators and their investors that result from the delays and uncertainties of the regulatory processes. The guarantee of an opportunity to participate in the new service, coupled with the six month head start over competing applicants, should restore much of the competitive advantage an innovator might otherwise lose through the usual rule making and licensing processes. Comment is sought regarding the need for the "pioneer's preference" and on this particular proposal for its implementation.

4. In the Commission's view, this proposed "pioneer's preference" is consistent with the Supreme Court decision in *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*). Therein, the Court held that the

Communications Act requires that all *bona fide*, competing applications are entitled to comparative consideration. However, in *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202-05 (1956), the Court indicated that when adequately supported by the record in a rule making proceeding, the Commission may establish threshold standards that applicants must satisfy before they are entitled to be eligible for comparative consideration. In some instances, such standards may limit eligibility to a class of one. In this case, the class of eligibles would be limited to the innovator(s). The Commission requests comment on this tentative finding.

5. As an alternative to the proposal to guarantee the innovator an opportunity to be one of the licensed service providers, the Commission also seeks comment on whether it might be more appropriate to give a "pioneer" some sort of comparative preference in a lottery or hearing. In the latter case, this preference could then be balanced against other criteria that are normally considered when applicants are considered comparatively. Comments are also sought on the transferability of a "pioneer's preference."

6. Finally, the Commission declines to consider Washington Center's proposals for expanding the role of experimental authorizations and setting aside discrete spectrum for experimentation. The Commission finds that the current experimental authorization process adequately encourages the introduction and development of new services and technologies and that, in light of today's spectrum shortages, it is unreasonable to set aside discrete blocks of spectrum for experiments.

7. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. This is a non-restricted notice and comment rule making proceeding. See § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for rules governing permissible *ex parte* contacts.

Ordering Clauses

10. This action is taken pursuant to sections 4(i), 7(a), 303 (c), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303 (c), (g), and (r), and 309(a).

11. The Application for Review of Washington Center for Public Policy Research is hereby Granted In Part to the extent indicated herein and otherwise Denied.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Proposed Rule Changes

Part 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement. 5 U.S.C. 552, unless otherwise noted.

2. A new section 1.402 is proposed to be added to read as follows:

§ 1.402 Pioneer's preference.

(a) When filing a petition for rule making, pursuant to § 1.401, that seeks an allocation of spectrum for a new service developed by the petitioner, the petitioner may also submit a separate request that it be awarded a pioneer's preference in the licensing process for the service. The petitioner must accompany its request for the preference with an application that contains pertinent information concerning its qualifications to be a licensee, its financial condition, and its plan for implementing the service. Petitioner must also submit any additional information that the Commission may request. At the latest, the Commission will respond to this request at the conclusion of the allocation proceeding, although it may respond to the request for a pioneer's preference at any time prior to the conclusion of the proceeding.

(b) If awarded, the pioneer's preference will provide that the petitioner's application will not be subject to competing applications. In addition, the Commission may provide that applications from competing service providers will be held in abeyance for six months. The Commission will determine the extent of the pioneer's preference on a case-by-case basis after considering all relevant circumstances.

(c) Parties to the rule making proceeding may file comments on the

request for a pioneer's preference in accordance with § 1.405 of the rules. If a request for a pioneer's preference is made, the rule making proceeding will be considered a restricted proceeding in accordance with § 1.1208 of the Commission's rules from the time that the notice of proposed rule making is released.

(d) In the event of a conflict between the pioneer's preference rule and any rule for a particular service that provides for the filing and consideration of competing applications, this rule shall prevail.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-10360 Filed 5-3-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 95

[PR Docket No. 90-222; FCC 90-157]

Radio Control (R/C) Radio Service Rules To Establish New Technical Standards for Transmitters Operating in the 72-76 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the Technical Regulations for the Radio Control (R/C) Radio Service to reduce the permitted level of unwanted emissions and to improve the frequency stability of transmitters operating in the 72-76 MHz band that are used for remote control of model aircraft, boats, and cars. This proposal is necessary so that all available R/C channels may be used more efficiently. The effect of this action is to reduce the possibility of adjacent channel interference, thereby making all the channels available at a single location.

DATES: Comments are due on or before August 10, 1990. Reply comments are due on or before September 14, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted April 18, 1990, and released April 27, 1990. The complete text of this notice of proposed rule making, including the proposed rule amendments, is available for inspection

and copying during normal business hours in the FCC Dockets Branch (room 239) 1919 M Street NW., Washington, DC. The complete text of this notice of proposed rule making, including the proposed rule amendments, 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 Rule Making

1. The Commission has proposed amending the Technical Regulations for the Radio Control (R/C) Radio Service to reduce the permitted level of unwanted emissions and to improve the frequency stability of transmitters operating in the 72-76 MHz band used for remote control of model aircraft, boats, and cars. The proposal responded to petitions RM-8683 and RM-8746, filed by Glenn H. Whidden and The Academy of Model Aeronautics, Inc., respectively.

2. In 1982, the Commission made available on a secondary basis 80 channels in the 72-76 MHz band for radio remote control of model aircraft, boats, and cars. Because of the current technical standards, however, simultaneous adjacent channel operation is often not possible at the same site.

3. The Commission proposed to tighten the frequency stability and reduce the unwanted emissions of transmitters operating on the 72-76 MHz channels in the R/C Service in order to reduce the possibility of adjacent channel interference, thus permitting all available channels to be used. To minimize the impact of the proposed changes on equipment manufacturers and dealers, the Commission proposed that effective March 1, 1992, all R/C transmitters operating in the 72-76 MHz band manufactured in or imported into the United States must comply with the new technical standards. The Commission also proposed to bar, effective March 1, 1993, the marketing and sale of such equipment that does not meet the new standards. Wideband transmitters purchased before March 1, 1993, not meeting the proposed narrowband standards, could continue to be used.

4. The Commission invites comments on the proposed technical standards and proposed implementation dates.

5. The proposed rules are set forth at the end of this document.

6. This is a non-restricted notice and comment rule making proceeding. See § 1.1206(a) of the Commission's Rules, 47

CFR 1.1206(a), for provisions governing permissible *ex parte* contacts.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, an initial regulatory flexibility analysis has been prepared. It is available for public inspection as part of the full text of this proposal. The full text of this proposal may be inspected and/or copied during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The full text may also be purchased from the Commission's copy contractor. The copy contractor's address and telephone number appear earlier in this summary.

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, 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.

9. This notice of proposed rule making and the proposed rule amendments are issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

10. 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 August 10, 1990, and reply comments on or before September 14, 1990. The Commission will consider all relevant and timely comments before taking final action in this proceeding. The proposal may have an impact on both United States firms doing business in foreign countries and foreign firms doing business in the United States. Pursuant to the 1989 Canada-United States Trade Agreement Pub. L. 100-449, 102 Stat. 1851, the Commission has provided at least a seventy-five day comment period.

11. 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 95

Communications equipment, Hobbies, Radio, Technical standards.

Donna R. Searcy,

Secretary.

Part 95 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Section 95.623 is amended by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 95.623 R/C transmitter channel frequencies.

(b) Each R/C transmitter that transmits in the 26–27 MHz frequency band with a mean TP of 2.5 W or less and that is used solely by the operator to turn on and/or off a device at a remote location, other than a device used solely to attract attention, must be maintained within a frequency tolerance of 0.01%. All other R/C transmitters that transmit in the 26–27 MHz frequency band must be maintained within a frequency tolerance of 0.005%. Except as noted in paragraph (c), R/C transmitters capable of operation in the 72–76 MHz band must be maintained within a frequency tolerance of 0.005%.

(c) On or after March 1, 1992, all R/C transmitters capable of operation in the 72–76 MHz band that are either manufactured in or imported into the United States, or are marketed or sold on or after March 1, 1993, must be maintained within a frequency tolerance of 0.002%. R/C transmitters operating in the 72–76 MHz band marketed or sold before March 1, 1993, may continue to operate with a frequency tolerance of 0.005%.

3. In § 95.631(b), the entry in the table for R/C transmitters is revised, the present Note to the table is designated as Note 1 and Note 2 is added to the table; paragraphs (b) (7) and (8) are revised, and paragraphs (b) (10), (11), and (12) are added before the Note at the end of this section to read as follows:

§ 95.631 Unwanted radiation.

(b) * * *

Note 1: Unwanted RF radiation may be stated in mean power or in peak envelope power, provided it is stated in the same parameter as TP.

Note 2: Paragraphs (1), (10), (11), and (12) apply to transmitters operating in the 72–76 MHz band manufactured or imported into the United States on or after March 1, 1992, or marketed or sold on or after March 1, 1993.

Paragraphs (1), (3), and (7) apply to transmitters operating in the 72–76 MHz band manufactured or imported into the United States before March 1, 1992, or marketed or sold before March 1, 1993.

R/C transmitters operating in the 72–76 MHz band marketed or sold before March 1, 1993, meeting the emission standards specified in paragraphs (1), (3), and (7), may continue to operate.

(7) At least $43 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(8) At least $53 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

(10) At least 45 dB on any frequency removed from the center of the authorized bandwidth by more than 100% up to and including 125% of the authorized bandwidth.

(11) At least 55 dB on any frequency removed from the center of the authorized bandwidth by more than 125% up to and including 250% of the authorized bandwidth.

(12) At least $56 + 10 \log_{10}$ (TP) dB on any frequency removed from the center of the authorized bandwidth by more than 250%.

[FR Doc. 90-10361 Filed 5-3-90; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1043 and 1084

[Ex Parte No. MC-5 (Sub No. 10)]

Removal of Regulations Governing Cargo Liability Insurance Surety Bonds or Other Security Required by Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Commission is discontinuing its proceeding, proposed in our Notice of Proposed Rulemaking published November 27, 1989, 54 FR 48779, to eliminate ICC regulations requiring motor common carriers of property and freight forwarders to file with the Commission, and maintain on a continuous basis, evidence of cargo liability insurance for the protection of the public. An overwhelming majority of the participants in this proceeding contend that the Commission should not adopt the proposal to remove the Commission's existing cargo insurance requirements from regulation. These participants have convinced us that the adoption of this proposal would adversely affect shippers, as well as the carriers, forwarders and brokers that serve them. These participants have also convinced us that the elimination of the Commission's cargo insurance regulations would leave the public without additional protection to satisfy loss and damage claims, and would reduce the quality of service that the transportation entities subject to this requirement now provide.

DATES: The discontinuance is effective May 4, 1990.

FOR FURTHER INFORMATION CONTACT:

Alice K. Ramsay, (202) 275-0854

or

Heber P. Hardy, (202) 275-7819, (TDD for hearing impaired (202) 275-1821).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pickup in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 275-1721).

Decided: April 26, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-10401 Filed 5-3-90; 8:45 am]

BILLING CODE 7035-01-M

Transmitter	Emission type	Applicable paragraphs
R/C		
27 MHz band.....	As specified in § 95.627(b).	(1), (3), (7).
72-76 MHz band.	As specified in § 95.627(b).	(1), (3), (7), (10), (11), (12).

Notices

Federal Register

Vol. 55, No. 87

Friday, May 4, 1990

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Except as noted below, the Mid-Atlantic Council and its Squid, Mackerel, and Butterfish Committee will hold public meetings on May 22-24, 1990, at the Holiday Inn Somerset, 195 Davidson Avenue, Somerset, NJ; telephone: 401-356-1700.

On May 22 the Squid, Mackerel, and Butterfish Committee will hold a public fact-finding meeting from 10 a.m., to 1 p.m., to gather available information from the fishing industry on 1990 joint ventures and foreign fishing operations for Atlantic mackerel. Later on May 22, from 2 p.m. to 5 p.m., the Committee will hold a public meeting to develop possible changes in the procedures and rules for joint ventures, and foreign fishing for Atlantic mackerel for 1991.

On May 23-24, 1990, the Mid-Atlantic Council will hold both a public meeting and a closed meeting (not open to the public). On May 23 the Council will begin the public meeting at 8:30 a.m. Immediately thereafter, between 8:40 a.m. and 1:15 p.m., the Council will meet in a closed session to consider personnel matters. At 1:15 p.m., the Council will resume the public meeting to consider issues relating to Amendments #1 to the Summer Flounder and Swordfish Fishery Management Plans. On May 24 the Council will continue its public meeting at 8 a.m., and adjourn at approximately noon.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New

Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: April 30, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-10421 Filed 5-3-90; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's groundfish Limited Entry Amendment Drafting and Oversight Committees will hold a public meeting on May 14-15, 1990. The meeting will be held in the Pacific Council's chamber, main floor, Metro Building, 2000 SW. First Avenue, Portland, OR. The Committees will begin meeting on May 14 at 10 a.m., and will adjourn on May 15 by 4 p.m. The Committee's primary tasks will be to investigate possibilities for a permit buy-back program, and to develop the individual transferrable quota alternative for comparison with the system of license limited entry in the fishery management plan amendment documents.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: April 30, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-10422 Filed 5-3-90; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 3 to Permit 448]

Endangered Species; Permit Modification; Massachusetts Coop. Fishery Research Unit

Notice is hereby given that pursuant to the provisions of § 222.25 of the regulations governing endangered fish and wildlife (50 CFR part 222), Scientific Research Permit No. 448 issued to the Massachusetts Cooperative Fishery Research Unit, University of

Massachusetts, Holdsworth Hall, Amherst, Massachusetts 01003 on January 30, 1984 (49 FR 4541); as modified on January 2, 1987 (52 FR 126); and May 5, 1987 (52 FR 17796); is further modified as follows:

Section B.8 is deleted and replaced by:

"8. This permit is valid with respect to the taking authorized herein until December 31, 1990. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the animals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder."

This modification became effective December 31, 1989.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act. This modification was issued in accordance with, and is subject to, 50 CFR parts 217-222 of the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910 (301/427-2289);
 Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, Florida 33702 (813/893-3141); and
 Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200).

Dated: April 26, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90-10375 Filed 5-3-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 4, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 9 and 16, March 16 and 23, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 4653, 5646, 9940 and 10798) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Insulation Tape, Electrical
5970-00-419-4291
Marker, Tube Type
7520-00-043-3408

Services

Food Service Attendant
Cannon Air Force Base, New Mexico

Janitorial/Custodial
Fort Worth Federal Center
Fort Worth, Texas

Harold G. Fischer,

Associate Director for Facility Operations.

[FR Doc. 90-10412 Filed 05-03-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions and Deletions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities and military resale commodities to be produced and a service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 4, 1990.

ADDRESSES: Committee for Purchase From the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities, military resale commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities, military resale commodities and service to Procurement List 1990, which was published November 3, 1989 (54 FR 48540):

Commodities

Strap, Webbing
5340-00-126-9011
Ink, Marking, Stencil
7510-00-183-7697
7510-00-183-7698
7510-00-419-9564
7510-00-469-7910

Paper, Toilet Tissue
8540-00-530-3770

(Requirements for GSA Zone 2 only)

Military Resale Item No. and Name

662 Web, Cargo, Large Car Top
663 Web, Cargo, Small Car Top
664 Web, Cargo, Large Truck
665 Web, Cargo, Small Truck

Service

Repacking
Mare Island Naval Shipyard
Vallejo, California

Deletions

It is proposed to delete the following commodities from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Paper Set, Manifold and Carbon

7530-00-401-6910

7530-01-072-2536

7530-01-072-2537

7530-01-072-2538

7530-01-072-2539

(Requirements for GSA Regions W, 4 and 6)

Harold G. Fischer,

Associate Director for Facility Operations.

[FR Doc. 90-10413 Filed 5-03-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Environmental Impact Statements For Eaker Air Force Base, AR and Wurtsmith Air Force Base, MI

A Notice of Intent (NOI) was published in the Federal Register on February 9, 1990. This amended NOI supplements the original NOI by adding a reasonable alternative for environmental analysis.

The United States Air Force intends to study the feasibility of closing Eaker AFB, Arkansas. Wurtsmith AFB, Michigan has been determined to be a reasonable alternative which must be evaluated under the National Environmental Policy Act and implementing Council on Environmental Quality Regulations. As part of that study process, the Air Force will prepare two Environmental Impact Statements (EISs) for use in decision making regarding the proposed closure and final disposition/re-use of property in the event the Air Force decides for closure.

The first Environmental Impact Statement (EIS) will be prepared to assess the impact of the possible closure of each Air Force base. The EIS will discuss the possible withdrawal of B-52 and KC-135 aircraft from Eaker and Wurtsmith Air Force Bases. The active duty Air Force tenant units not inactivated would also be relocated. The

EIS will also analyze the no action alternative to closing each Air Force base.

The second EIS would be prepared only if there is a final decision for closure. This EIS would cover the final disposition and re-use of excess property. All property disposal will be in accordance with provisions of public law, federal property disposal regulations, and Executive Order 12512.

The Air Force will conduct scoping meetings to discuss the issues and concerns that should be addressed in the two EISs. Notice of the time and place of the proposed scoping meetings will be made available to public officials and announced in the news media in the areas where the meetings will be held.

To assure the Air Force will have sufficient time to consider public inputs on issues to be included in the development of the first EIS, comments should be forwarded to the addressee listed below by June 7, 1990. However, the Air Force will accept comments to the addressee below at any time during the environmental impact analysis process.

For further information concerning the study of Eaker or Wurtsmith Air Force Bases and the related EIS, please contact: Director of Environmental Planning, AFRCE-BMS/DEV, Norton AFB, CA 92409-6448.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-10395 Filed 5-3-90; 8:45 am]

BILLING CODE 3910-01-M

Intent To Prepare Environmental Impact Statements for Myrtle Beach Air Force Base, SC, England Air Force Base, LA and Davis-Monthan Air Force Base, AZ

A Notice of Intent (NOI) was published in the *Federal Register* on February 9, 1990. This amended NOI supplements the original NOI by adding two reasonable alternatives for environmental analysis.

The United States Air Force intends to study the feasibility of closing Myrtle Beach AFB, South Carolina, England AFB, Louisiana and Davis-Monthan AFB, Arizona have been determined to be reasonable alternatives which must be evaluated under the National Environmental Policy Act and implementing Council on Environmental Quality Regulations. As part of that study process, the Air Force will prepare two Environmental Impact Statements (EISs) for use in decision-making regarding the proposed closure and final disposition/re-use of property in the

event the Air Force decides to close any of the bases.

The first Environmental Impact Statement (EIS) will be prepared to assess the impact of the possible closure of each Air Force base. The EIS will discuss the possible withdrawal of aircraft from each base. The aircraft would undergo force structure retirement and/or relocation. The Aerospace Maintenance and Regeneration Center would not be inactivated and will remain in place. All other active duty Air Force tenant units not inactivated would also be relocated. The EIS will also analyze the no action alternative to closing each Air Force base.

The second EIS would be prepared only if there is a final decision for closure. This EIS would cover the final disposition and re-use of excess property. All property disposal will be in accordance with provisions of public law, federal property disposal regulations and Executive Order 12512.

The Air Force will conduct scoping meetings to discuss the issues and concerns that should be addressed in the two EISs. Notice of the time and place of the proposed scoping meetings will be made available to public officials and announced in the news media in the areas where the meetings will be held.

To assure the Air Force will have sufficient time to consider public inputs on issues to be included in the development of the first EIS, comments should be forwarded to the addressee listed below by June 7, 1990. However, the Air Force will accept comments to the addressee below at any time during the environmental impact analysis process.

For further information concerning the study of Myrtle Beach, England or Davis-Monthan Air Force Bases and the related EIS, please contact: Director of Environmental Planning, AFRCE-BMS/DEP, Norton AFB, CA 92409-6448.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-10396 Filed 5-3-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Meeting of Fund for Improvement and Reform of Schools and Teaching Boards

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board, ED.

ACTION: Notice of a partially closed meeting.

SUMMARY: This notice sets forth the schedule and agenda of a partially closed meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: May 31, 1990, 9 a.m.-5 p.m. (closed); June 1, 1990, 8:30 a.m.-11:30 a.m. (open); June 1, 1990, 11:30 a.m.-3 p.m. (closed).

ADDRESSES: The Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jennifer Mills, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, (202) 357-6496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The FIRST Board Meeting will be closed to the Public on May 31, 1990 from 9 a.m. to 5 p.m. and again on June 1, 1990 from 11:30 a.m. to 3 p.m. to review and recommend Schools and Teachers—School Level and Family School Partnership projects for funding and assign the additional competitive preference points to the School Level projects. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemptions (4) and (6) of section 552b(c) (4 and 6) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)(6)). Discussion during the closed portion of the meeting will involve disclosure of sensitive information about: (a) Applicants, (b) funding levels and requests, and (c) the names and comments of expert reviewers. Any such discussion would disclose commercial or financial information obtained from a person and privileged or confidential, and disclose

information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy if conducted in open session. Such matters are protected by exemptions (c) (4) and (6) of section 552b of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b(c) will be available to the public within fourteen days of the meeting.

The meeting will be open to the public from 8:30 a.m. to 11:30 a.m. on June 1, 1990. The agenda for the open portion of the meeting will include the nominations/renomination of 5 members, discussion of the FIRST/FIPSE conference, and suggestions for changes to the regulations.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching from the hours of 8:30 a.m. to 5 p.m.

Christopher T. Cross,
Assistant Secretary.

[FR Doc. 90-10350 Filed 5-3-90; 8:45 am]
BILLING CODE 4000-01-M

National Assessment Governing Board Meeting Amended

AGENCY: National Assessment Governing Board.

ACTION: Amendment to notice of a partially closed meeting.

SUMMARY: This amends the notice of a partially closed meeting of the National Assessment Governing Board published on Friday, April 20, 1990 in Vol. 55, No. 77, page 14997.

DATES: May 11, 1990.

TIME: 12 p.m. until 1 p.m.

LOCATION: Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: In addition to the closed portion scheduled to begin at 4 p.m. on May 11, the National Assessment Governing Board will meet in closed session on May 11, 1990, from 12 p.m. until 1 p.m. This portion of the meeting will be closed under the authority of 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and under exemption 9(B) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). During the closed portion of the meeting, the Board will review the grantee's draft report on the cross sectional analysis of the NAEP data prior to its formal release by the Department. The draft report is still

undergoing technical review and analysis and there is a significant possibility that the data may be incorrect or incomplete. The May 12 continuation of the meeting will remain open.

Premature disclosure of incorrect or incomplete information would be likely to significantly frustrate implementation of the proposed agency action. Such matters are protected by 5 U.S.C. 552b(c)(9)(B).

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-10402 Filed 5-3-90; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-1205-000 et al.]

Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Texas Gas Transmission Corporation

[Docket No. CP90-1205-000]

April 26, 1990.

Take notice that on April 18, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-1205-000 a request, as supplemented on April 24, 1990, pursuant to §§ 157.205, 157.211, 157.212, and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.212, and 284.223) for authorization (1) to increase the capacity of an existing point of delivery known as Greenville No. 2, located on Texas Gas' 18-inch pipeline in Washington, County, Mississippi; (2) to reassign volumes previously delivered to Mississippi Valley Gas Company (Ms. Valley) at Greenville No. 2, to be delivered at any of the other points of delivery listed on the service agreement between Ms. Valley and Texas Gas; (3) to deliver gas on an interruptible basis through the modified Greenville No. 2 meter station to Mississippi Power & Light Company (MP&L), all under the authority of Texas Gas' blanket certificate issued in Docket No. CP82-407-000, and (4) to transport gas on an interruptible basis for MP&L under the authority of Texas Gas' blanket certificate issued in Docket No. CP88-686-000, all as more fully set forth in the request which is on

file with the Commission and open to public inspection.

Texas Gas states that the proposed changes in service are a result of negotiations which have taken place between Ms. Valley and MP&L regarding service to the Gerald Andrus Steam Electric Station (Andrus Plant) owned by MP&L located near Greenville, Mississippi. It is indicated that the Andrus Plant is presently served by Ms. Valley on an interruptible basis through a meter station known as the Gerald Andrus Meter Station (Andrus Station). It is also indicated that Ms. Valley receives gas from Texas Gas at two points of delivery; Greenville No. 1 and Greenville No. 2 and redelivers gas to MP&L for the Andrus Plant at the Andrus Station. Texas Gas states that Ms. Valley and MP&L have agreed that Ms. Valley would discontinue service to MP&L for the Andrus Plant and sell and transfer certain facilities to MP&L and Texas Gas, so the Texas Gas can serve MP&L directly. It is also stated that in order to effectuate this arrangement, Texas Gas has requested that the following service or changes in service be authorized by the Commission:

(1) Texas Gas requests authorization pursuant to § 157.211(a)(2) to increase the capacity of its Greenville No. 2 meter station by incorporating into the station the Andrus Station (located adjacent to Greenville No. 2), ownership of which would be transferred to Texas Gas by Ms. Valley. Texas Gas states that it would then deliver gas transported on an interruptible basis directly to MP&L at Greenville No. 2.

(2) Texas Gas requests authority to reassign volumes previously delivered to Ms. Valley at Greenville No. 2, for delivery to any or all of the remaining points of delivery in the sales service agreement between Ms. Valley and Texas Gas, and to remove Greenville No. 2 as point of delivery under the sales service agreement.

In addition, Texas Gas also requests authority to provide an interruptible transportation service for MP&L under its blanket certificate. Texas Gas indicates that pursuant to an agreement dated April 5, 1990, it would receive up to 203,540 million Btu of natural gas per day from specified points located in onshore and offshore Louisiana and Texas, Indiana, Kentucky, Tennessee, Illinois, Arkansas, and Ohio and redeliver the gas at specified points located in Mississippi. Texas Gas estimates that the peak day, average day, and annual volumes would be 203,540 million Btu, 90,000 million Btu, and 12,000,000 million Btu, respectively.

Texas Gas states that the agreement would continue on a month-to-month basis unless terminated upon thirty days' written notice by either party. Texas Gas proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT. Texas Gas estimates that the cost of the modifications to Greenville No. 2 would be \$293,540, including the cost to acquire the Andrus Station.

Comment date: June 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-1168-000]

Trunkline Gas Company

[Docket No. CP90-1233-000]

April 25, 1990

Take notice that Transcontinental Gas

Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket Nos. CP88-328-000 and CP86-586-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.¹

Information applicable to each transaction, including the identity of the

¹ These prior notice requests are not consolidated.

shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day average day annual dth	Receipt points	Delivery points	Start up date rate schedule service type	Related docket, contract date
CP90-1168-000 (4-24-90) ^a	Oxy U.S.A., Inc., (marketer).	1,000,000 1,000,000 365,000,000	OTX.....	LA, TX.....	10-1-89, IT, Interruptible.	ST90-2411-000, 7-13-89.
CP90-1233-000 (4-23-90)	V.H.C. Gas Systems, L.P. (marketer).	200,000 200,000 72,000,000	IL, LA, TN, OLA TX, OTX.	IL.....	1-31-90, PT, Interruptible.	ST90-2362-000, 10-13-89.

^a Offshore Louisiana and offshore Texas are shown as OLA and OTX.

^b The request under blanket authorization was tendered for filing April 9, 1990. However, the required fee (18 CFR 381.207) was not paid until April 24, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

3. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90-1226-000]

United Gas Pipe Line Company

[Docket No. CP90-1227-000]

United Gas Pipe Line Company

[Docket No. CP90-1228-000]

Columbia Gas Transmission Corporation

[Docket No. CP90-1229-000]

Columbia Gas Transmission Corporation

[Docket No. CP90-1230-000]

April 26, 1990.

Take notice that the above referenced companies (Applicants) filed in the respective dockets prior notice requests

pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.²

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day

² These prior notice requests are not consolidated.

and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day ¹ avg. annual	Points of		Start up date rate schedule	Related ² docket
				Receipt	Delivery		
CP90-1226-000 (4-20-90)	Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas, 77251-1188.	Exxon Corporation.	100,000 75,000 36,500,000	TX, LA, MSA.....	LA, TX.....	3-15-90 IT-1.....	CP86-435-000. ST90-2481-000.
CP90-1227-000 (4-20-90)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas, 77251-1478.	NASA/John C. Stennis Space Center.	618 618 225,570	TX, LA.....	MS.....	1-1-90 ITS.....	CP88-6-000. ST90-1722-000.
CP90-1228-000 (4-20-90)	United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas, 77251-1478.	Mobil Natural Gas Inc. Center.	51,500 51,500 18,797,500	LA.....	LA.....	2-16-90 ITS.....	CP88-6-000. ST90-2251-000.
CP90-1229-000 (4-20-90)	Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, 25314.	O&R Energy Development, Inc.	40,000 32,000 14,600,000	KY, WV.....	PA, NY, MA, NH.....	3-1-90 ITS.....	CP86-240-000. ST90-2311-000.
CP90-1230-000 (4-20-90)	Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia, 25314.	Yuma Gas Corporation.	30,000 24,000 10,950,000	various Appalachian meters on Columbia's pipeline system.	existing interconnections with Columbia's transmission system.	2-10-90 ITS.....	CP86-240-000. ST90-2208-000.

¹ Quantities are shown in MMBtu unless otherwise indicated.

² The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Mississippi River Transmission Corporation

[Docket Nos. CP90-1234-000, CP90-1235-000, CP90-1236-000, CP90-1237-000, CP90-1238-000, CP90-1239-000, CP90-1240-000]

April 26, 1990

Take notice that Mississippi River Transmission Corporation, 9900 Clayton Road, St. Louis, Missouri 63124, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of

various shippers under its blanket certificate issued in Docket No. CP89-1121-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.³

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation

³ These prior notice requests are not consolidated.

service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Application would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Start up date rate schedule service type	Related docket contract date
CP90-1234-000 (4-23-90)	PSI, Inc. (marketer).....	200,000 100,000 36,500,000	OK, LA, TX, IL, AR.....	AR, IL, LA, TX, MO.....	2-28-90 ITS Interruptible.	ST90-2351-000 2-2-90.
CP90-1235-000 (4-23-90)	American National Can Company (end user).	10,000 4,110 1,500,000	LA, TX, IL, AR.....	MO.....	2-27-90 ITS Interruptible.	ST90-2344-000 1-18-90.
CP90-1236-000 (4-23-90)	ARCO Natural Gas Marketing, Inc. (producer).	100,000 100,000 36,500,000	LA, TX, IL, AR.....	IL, MO.....	2-26-90 ITS Interruptible.	ST90-2348-000 1-19-90.
CP90-1237-000 (4-23-90)	Amoco Production Company (producer).	100,000 100,000 36,500,000	OK, LA, TX, IL, AR.....	IL, MO.....	2-27-90 ITS Interruptible.	ST90-2349-000 12-28-89.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Start up date rate schedule service type	Related docket contract date
CP90-1238-000 (4-23-90)	PSI, Inc. (marketer)	200,000 100,000 36,500,000	OK, LA, TX, IL, AR	AR, IL, LA, TX, MO	2-28-90 ITS Interruptible.	ST90-2349-000 2-2-90.
CP90-1239-000 (4-23-90)	PSI, Inc. (marketer)	200,000 100,000 36,500,000	OK, LA, TX, IL, AR	AR, IL, LA, TX, MO	2-28-90 ITS Interruptible.	ST90-2352-000 2-2-90.
CP90-1240-000 (4-23-90)	Energy Dynamics, Inc. (marketer)	50,000 25,000 9,125,500	LA, TX, IL, AR	IL, MO	2-27-90 ITS Interruptible.	ST90-2347-000 1-15-90.

5. Mississippi River Transmission Corporation

[Docket No. CP90-1241-000]

April 26, 1990.

Take notice that on April 24, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90-1241-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a delivery point to one of its existing firm sales customers, Arkansas Louisiana Gas Company (ALG), under the authorization issued in Docket No. CP82-489-000 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.

MRT states that pursuant to § 157.212(a) of the Commission's Regulations, it requests authorization to add a delivery point to ALG by installing a tap and appurtenant facilities which will include a two-inch meter and regulator station, all to be located in MRT's existing right-of-way, and right-of-way MRT is in the process of acquiring, adjacent to its Main Line 2 in the SE/4 of the SW/4 of Section 36, T5S, R6W, Jefferson County, Arkansas. MRT states that the proposed facilities will be connected with ALG's facilities which will be located on the right-of-way owned by ALG. It is further stated that ALG requires the delivery of gas at the proposed location to serve customers located in or near the community of Cornerstone, Arkansas. According to MRT, the gas will be used by ALG's customers primarily for drying grain and for residential and commercial heating.

MRT states that the addition of the Cornerstone delivery point will not result in an increase in the total daily or annual quantities MRT is authorized to deliver to ALG pursuant to the current service agreement, effective December 19, 1986, and the current certificate authority, 40 FERC ¶ 61,051 (1987). MRT submits that the service agreement with

ALG provides that MRT is obligated to deliver natural gas up to ALG's contract demand of 29,225 Mcf per day.* It is also stated that peak day deliveries to ALG during 1986, 1987 and 1988 were 24,527 Mcf, 21,046 Mcf and 27,171 Mcf, respectively. Additionally, MRT states that in 1989, ALG exceeded its contract demand during a short period of unusually cold weather from December 21-23. Excluding that unusual three-day period, MRT states that ALG's 1989 peak day delivery was 27,830 Mcf.

At the delivery point which is the subject of this application, MRT would deliver 300 Mcf of natural gas on a peak day and an estimated 30,000 Mcf of natural gas on an annual basis. It is stated that most of these requirements will be used for grain drying during the months of August, September and October, so these additional deliveries should not add significantly to ALG's winter peak day demand.

MRT estimates that the cost of the facilities to be installed is \$35,000; ALG will reimburse MRT for all costs associated with such facilities and the application filing fee.

MRT states that its FERC Gas Tariff does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT further states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to ALG pursuant to its preexisting service agreement.

Comment date: June 11, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. LEDCO Inc. (formerly Loutex Energy Inc.)

[Docket No. CI88-53-002]

April 26, 1990.

Take notice that on April 16, 1990, LEDCO Inc. (LEDCO) of 333 N. Sam

* MRT states that effective November 1, 1989, its tariff has stated ALG's contract demand on a thermal basis as 29,810 MMBtus.

Houston Parkway E., Suite 400, Houston, Texas 77002, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket unlimited-term certificate with pregranted abandonment previously issued by the Commission in Docket No. CI88-53-001 to authorize sales for resale of imported gas and gas purchased from non-first sellers such as gas sold to LEDCO under pipeline discount sales authority and to reflect the name change from Loutex Energy Inc. to LEDCO Inc., all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 15, 1990, in accordance with Standard Paragraph J at the end of this notice.

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.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings 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, .214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10370 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-251-005 and TQ90-3-1-002]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 27, 1990.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on April 26, 1990, in compliance with various orders issued by the Commission in connection with this proceeding, tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1 ("FERC GAS Tariff"). These revisions relate, in part, to an inadvertent omission by Alabama-Tennessee to include as part of its Compliance Filing submitted in the captioned dockets on March 30, 1990 Substitute Third Revised Sheet No. 46 reflecting the change directed by the Commission regarding the performance standard for prospective shippers on Alabama-Tennessee's system. Alabama-Tennessee proposes an effective date of November 1, 1989 for this tariff sheet. In addition, Alabama-Tennessee tendered for filing Substitute Alternate Original Sheet No. 52C in order to correct a typographical error that appeared on that tariff sheet. Alabama-Tennessee proposes an effective date of April 1, 1990 for this tariff sheet.

Copies of the filing were served upon the company's jurisdictional customers and interested public bodies, and all persons on the Commission's official service lists in Docket Nos. RP89-251-000 and TQ90-3-1-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 4, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10366 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA90-1-20-001 and RP90-22-008]

Algonquin Gas Transmission Co.; Compliance Filing and Proposed Changes in FERC Gas Tariff

April 27, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on April 5, 1990, tendered for filing a proposed amendment to a previously filed tariff sheet to its FERC Gas Tariff, Second Revised Volume No. 1, as set forth below:

Proposed to be effective March 1, 1990

Substitute Thirty-ninth Revised Sheet No. 201

Substitute Original Sheet No. 201A

Substitute Fortieth Revised Sheet No. 203

Substitute Thirty-sixth Revised Sheet No. 204

Substitute Thirty-third Revised Sheet No. 205

Second Substitute Sixth Revised Sheet No. 631

Sixth Revised Sheet No. 631A

Fourth Revised Sheet No. 633

Algonquin states that it is filing the above listed tariff sheets in compliance with the Commission's March 5, 1990 Letter Order accepting, subject to conditions, Algonquin's Annual Purchased Gas Adjustment filing of January 3, 1990 in Docket No. TA90-1-20-000. Algonquin states that it is revising Sheet Nos. 201 through 205 to: (i) Reflect the separation of standby charges from the estimated average cost of gas, (ii) repaginate Sheet Nos. 201 and 201A, and (iii) initiate a three part surcharge adjustment. The effect of the three part surcharge adjustment is to reduce the demand-1 rate by 6.01¢ per MMBtu, reduce the demand-2 charge by 0.20¢ per MMBtu and increase the commodity charge by 0.90¢ per MMBtu from those rates filed in Algonquin's Annual PGA of January 3, 1990.

Algonquin further states that it has revised its Section 17, PGA Provision (Sheet No. 631 through 633) and is

refiling Schedule C1, Category of Deferred Costs to comply with the requirements of the Commission's March 5, 1990 Letter Order.

Algonquin also states that it is including in its filing revised tariff sheets, listed below, to its Motion Filing of March 20, 1990 in Docket No. RP90-22-000 to bring forward the changes required by the Commission's March 5 Letter Order into the affected sheets. All as more fully set forth in Algonquin's filing.

Proposed to be effective May 1, 1990

Substitute Fortieth Revised Sheet No. 201

Second Revised Sheet No. 201A

Substitute Forty-first Revised Sheet No. 203

Substitute Thirty-seventh Revised Sheet No. 204

Substitute Thirty-fourth Revised Sheet No. 205

Substitute Original Sheet No. 206

Substitute Original Sheet No. 207

Second Substitute Seventh Revised Sheet No. 631

Substitute Alternate Fortieth Revised Sheet No. 201

Substitute Alternate Second Revised Sheet No. 201A

Substitute Alternate Forty-first Revised Sheet No. 203

Substitute Alternate Thirty-seventh Revised Sheet No. 204

Substitute Alternate Thirty-fourth Revised Sheet No. 205

Fifth Revised Sheet No. 633

Algonquin notes that a copy of the instant filing was served upon each of the affected parties and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before May 7, 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. 90-10367 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-013 and CP89-2210-003]

ANR Pipeline Co.; Proposed Changes In FERC Gas Tariff

April 30, 1990.

Take notice that ANR Pipeline Company ("ANR") on April 20, 1990 tendered for filing as part of its FERC GAs Tariff, Original Volume No. 3, First Revised Sheet Nos. 121, 137 and 138.

On March 30, 1990, ANR filed in the captioned dockets to *inter-alia*, change its methodology of measurement of BTU content from a "saturated" basis to a "dry" basis. ANR's intent was to implement this change system wide. ANR inadvertently omitted the revised tariff sheets necessary to convert the measurement methodology in its Volume No. 3 tariff. Therefore, ANR has submitted the aforementioned tariff sheets, and requests that such sheets be made effective May 1, 1990.

ANS states that the changes requested in the instant filing are only to effect such change in measurement methodology.

ANR submits the above mentioned tariff sheets with a requested effective date of May 1, 1990.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Such protests should be filed on or before May 7, 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. 90-10365 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-6-000]

DeNovo Oil & Gas, Inc.; Amendment to Petition for Declaratory Order

April 27, 1990.

Take notice that on April 24, 1990, DeNovo Oil & Gas, Inc. (DeNovo) filed pursuant to rule 207 (18 CFR 385.207) and subpart K (18 CFR 385.1101 *et seq.*) of the Commission's Rules of Practice and Procedure and title I of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301, *et seq.*) an amendment to its

petition for a declaratory order. DeNovo filed the original petition for a declaratory order on March 8, 1990, the Commission noticed it on March 19, 1990, and it was published in the **Federal Register** on March 23, 1990 (55 FR 10,801).

In its original petition DeNovo requested that the Commission issue an order that the reimbursement of a certain construction cost would not violate title I of the NGPA. DeNovo's amendment contains additional discussion of the matters presented in DeNovo's original petition including certain opinion letters by the Commission's general counsel. In addition, DeNovo requests alternative relief in the form of an NGPA section 502(c) adjustment if the Commission denies DeNovo's declaratory order request and determines that reimbursement of a certain pipeline construction cost to DeNovo is prohibited as a component of the first sale price under the Commission's NGPA regulations.

The procedures applicable to the conduct of this proceeding are found in the Commission's Rules of Practice and Procedure (18 CFR part 385).

Any person desiring to participate in this proceeding must file a motion to intervene in accordance with the Commission's Rules of Practice and Procedure. All motions to intervene and answers to said amendment must be filed within thirty (30) days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10368 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-8-000]

Applications, Hearings, Determinations, Complaint and Extension of Time; Natural Gas Pipeline Co. of America

April 27, 1990.

In the matter of Natural Gas Pipeline Company of America, Petitioner v. Ronald H. Woods, Administrator of the Estate of Herbert S. Woods, Ray Herring, Inland Investment Company, Inc., J.S. Swiney, Mary H. Connor, as Guardian for Pat Robertson, and Shirley C. Holly, Respondents.

Take notice that on March 20, 1990, Natural Gas Pipeline Company of America (Natural) filed with the Commission a complaint pursuant to sections 4, 5 and 16 of the Natural Gas Act, section 504 of the Natural Gas Policy Act of 1978, and rule 206 of the Commission's rules of practice and

procedure. Natural requests the Commission to issue an order directing the respondents to refund payments in excess of the maximum lawful price for gas purchased by Natural pursuant to an agreement between the parties dated October 10, 1978.

Natural states that due to an inadvertent accounting error it paid Herbert S. Woods and his successor, Ronald H. Woods, executor of the estate of Herbert S. Woods, as agent for respondents, an amount in excess of the maximum lawful price for gas purchased under the agreement. Natural asserts that the maximum lawful price for gas sold under the agreement is \$1.55 per Mcf pursuant to the Commission's order granting special relief in Docket No. R177-128, 5 FERC ¶ 61,008 (1978). Natural contends that despite requests respondents refused to refund the amount in excess of the maximum lawful price.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with rules 214 (18 CFR 385.214 (1989)) or 211 (18 CFR 385.211 (1989)) of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before May 29, 1990. All protests will be considered by the Commission but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint shall be filed on or before May 29, 1990.

On April 19, 1990, respondent Ronald H. Woods requested additional time to supplement his answer. His request is also granted to and including May 29, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-10371 Filed 5-3-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1242-000, CP90-1243-000, and CP90-1244-000]

United Gas Pipe Line Co., Northwest Pipeline Corp.; Requests Under Blanket Authorization

April 26, 1990.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations

under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.¹

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions

¹ These prior notice requests are not consolidated.

under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Any person or the Commission's staff may, within 45 days after 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 therefor, the proposed activity shall be deemed to be authorized effective the date 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.

Applicant: United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.

Blanket certificate issued in Docket No.: CP88-6-000.

Docket number (date filed)	Shipper name	Peak Day ¹ avg. annual	Points of		Start up date rate schedule	Related ² dockets
			Receipt	Delivery		
CP90-1242-000 (4-24-90)	Arkia Energy Marketing Company.	206,000 206,000 75,190,000	TX, LA, MS, Offshore LA	LA, TX, MS, AL, FL	2-13-90, FTS	ST90-2307-000.

Applicant: Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108.

Blanket Certificate Issued in Docket No. CP88-578-000.

Docket number (date filed)	Shipper Name	Peak day ¹ avg. annual	Points of		Start up date rate schedule	Related ² dockets
			Receipt	Delivery		
CP90-1243-000 (4-24-90)	Williams Gas Marketing Company.	10,000, 10,000 3,650,000	CO	CO	4-01-90, TF-1	ST90-2600-000.
CP90-1244-000 (4-24-90)	Phillips Petroleum Company.	70,000 70,000 25,500,000	CO	CO	4-01-90, TF-1	ST90-2601-000.

¹ Quantities are shown in MMBtu unless otherwise indicated.

² If an ST docket is shown, 120-day transportation service was reported in it.

[FR Doc. 90-10369 Filed 5-3-90; 8:45 am]
BILLING CODE 6717-61-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3763-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed April 23, 1990 Through April 27, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900131, DSuppl, FHW, NC, Smith Creek Parkway and Downtown Spur Construction, US 117 to US 74,

Wilmington, Updated and Additional Information, Funding, US Coast Guard Bridge Permit, COE section 10 and 404 Permits, New Hanover County, NC, Due: June 18, 1990, Contact: L.J. Ward (919) 733-7842.

EIS No. 900132, Final, AFS, OR, ID, Wallowa Whitman National Forest Land and Resource Management Plan, Additional Alternative Implementation, Baker, Union, Wallowa, Grant, Malheur and Umatilla Counties, OR and Adams, Nez Perce and Idaho Counties, ID, Due: June 4, 1990, Contact: Bruce McMilan (503) 523-6391.

EIS No. 900133, Draft, FHW, MN, MN-Trunk Highway-212 Construction, Cologne to MN-Trunk Highway-5/1-494 in Eden Prairie, Funding, Section 404 Permit, Carver and Hennepin

Counties, MN, Due: June 20, 1990, Contact: Stephen J. Bahler (612) 290-3259.

Amended Notices

EIS No. 900114, Final, AFS, UT, Uinta National Forest, Arterial Travel Route Development and Management Implementation, Utah and Wasatch Counties, UT, Due: May 14, 1990, Contact: Larry Call (801) 377-5780. Published FR 4-13-90—Incorrect due date.

EIS No. 900116, Draft, USN, HI, Pearl Harbor Naval Base Development, Access Improvements and Further Development of Ford Island and Construction of Facilities to Implement the Relocation of Battleship and Cruisers.

Implementation, Oahu, HI, Due: June 7, 1990, Contact: Gordon Ishikawa (808) 471-3088. Published FR 4-13-90—Review period extended.

EIS No. 900126, Final, AFS, ID, Boise National Forest, Land and Resource Management Plan, Implementation, Ada, Boise, Gem, Elmore, Valley and Washington, ID, Due: June 14, 1990, Contact: Dave Rittersbacher (208) 364-4161. Published FR 04-27-90—Review period extended.

EIS No. 900127, Draft, HUD, TX, Stonebridge Ranch Development Project, Mortgage Insurance, Section 404 Permit, City of McKinney, Collin County, TX, Due: June 11, 1990, Contact: I.J. Ramsbottom (817) 885-5482. Published FR 4-27-90—Incorrect phone number.

Dated: May 1, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-10434 Filed 5-3-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3763-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 16, 1990 through April 20, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the *Federal Register* dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-J82012-MT, Rating EC2, Lolo National Forest, Noxious Weed Management Plan, Implementation, Several, MT.

Summary: EPA requested that the final document includes additional information on alternative evaluation criteria and a monitoring plan that discusses parameters, locations, frequency, action levels, response actions, and the schedule and responsibility for implementing these activities.

ERP No. DR-AFS-K61094-CA, Rating EO2, Sherwin Bowl Ski Area Development, Alpine Skiing, Special Use Permit, Inyo National Forest, Mammoth Ranger District, Mono County, CA.

Summary: EPA expressed environmental objections because of

potential project impacts to surface water quality, the need to more fully assess the project's compliance with the requirements of section 404 of the Clean Water Act, and the need to adopt mitigation measures to fully control and reduce air pollution in order to ensure compliance with Federal and California air quality standards.

ERP No. D-AFS-K61103-CA, Rating EO2, Bear Mountain Ski Resort Expansion (formerly known as Goldmine), San Bernardino National Forest, Special Use Permit and Possible 404 Permit, San Bernardino County, CA.

Summary: EPA expressed environmental objections due to potential impacts to air quality, ground water resources, surface water quality, and water of the United States including wetlands. EPA noted that many potential adverse impacts can be reduced or eliminated by reconfiguring or downscaling the proposed project. EPA also asked that the final EIS more fully discuss the projects' consistency with section 404(b)(1) of the Clean Water Act.

ERP No. D-BLM-K60019-NV, Rating EU3, Thousand Springs Coal-Fired Power Plant Land Exchange, Construction and Operations, Right-of-way Grant, Section 404 Permit, Elko County, NV.

Summary: EPA believes that the proposed project is environmentally unsatisfactory because of significant adverse environmental impacts. The project would seriously degrade air quality and could also lead to conversion or loss of over 4,000 acres of wetlands due to ground water withdrawals and cessation of irrigation. EPA requested that the project be revised to reduce significant environmental impacts.

ERP No. D-BLM-K60020-CA, Rating EO2, North County Class III Sanitary Landfill Project, Aspen Road, Blue Canyon and Gregory Canyon Sites, Construction and Operation, Section 404 Permit, North and San Diego Counties, CA.

Summary: EPA expressed environmental objections due to potential contamination of ground water resources from the sanitary landfill and the possibility that adverse ground water impacts may not be adequately mitigated; potential adverse impacts to springs which nurture riparian habitats in two canyons and associated threatened and endangered species. EPA also asked that the final EIS more fully discuss the project's compliance with the Resource Recovery and Conservation Act (RCRA) and RCRA regulations governing sanitary landfills.

ERP No. D-BLM-K61100-AZ, Rating EC2, Arizona Strip District, Land and Resource Management Plan, Implementation, Mohave and Coconino Counties, AZ.

Summary: EPA urges the adoption of special management actions to protect riparian area watersheds and areas of high erosion potential in order to protect regional aquatic ecosystems due to existing water quality and watershed conditions in the Arizona Strip District.

ERP No. D-COE-K35013-CA, Rating EO2, Los Angeles International Golf Club Development, Dredged or Fill Material Discharge, 404 Permit, Sunland, Tujunga Valley, CA.

Summary: EPA expressed environmental objections due to the proposed project's apparent noncompliance with EPA's Clean Water Act section 404(b)(1) Guidelines and potential impacts to surface water quality. EPA also asked that the final EIS include measures to mitigate for potential increases in mobile air pollutant emissions from the hosting of special events.

ERP No. DA-NOA-K90007-00, Rating LO, Pacific Coast Groundfish Fishery Management Plan (FMP), Updated Information and Changes to the Current FMP, Amendment No. 4, CA, OR, and WA.

Summary: EPA expressed a lack of objections with the proposed action.

ERP No. D-UAF-L11010-ID, Rating EC2, Mountain Home Air Force Base (AFB) Realignment and Expanded Range Capability, Realignment from George AFB, Implementation, Elmore County, ID.

Summary: EPA has environmental concerns with this document. EPA's concerns were based on the use of chaff and potential air quality effects that are not adequately evaluated in this document or mitigated. The air quality effects should be fully evaluated due to the proximity of the Jarbidge Wilderness area. Additional information is needed on mitigation.

Final EISs

ERP No. F-AFS-J65153-MT, Trail Creek Timber Sale, Implementation, Beaverhead National Forest, Wisdom Range District, Beaverhead County, MT.

Summary: EPA has no objections to the preferred alternatives.

ERP No. F-AFS-K67009-NV, South Twin Lode Mining and Development Proposal, Approval of Plan of Operations, Arc Dome Recommended Wilderness Area, Toiyabe Mountains, Toiyabe National Forest, Nye County, NV.

Summary: EPA expressed continuing environmental concerns with potential impacts to water quality and riparian and aquatic habitats.

ERP No. F-AFS-K70604-CA, Mono Basin National Forest Scenic Area, Comprehensive Management Plan, Implementation, Inyo National Forest, Mono County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-FHA-G36142-OK, Adoption—Waterfall-Gilford Creek Watershed Protection, Flood Prevention and Drainage, Financial Assistance, McCurtain County, OK.

Summary: EPA has found that several wetland issues initially raised in review of the draft EIS need further attention to insure adequate assessment is given to wetland impacts. In view of the new wetlands policy considerations, EPA will reserve its final comments regarding wetland impacts and associated issues for the U.S. Army Corps of Engineers Clean Water Act 404 permit application.

ERP No. F-SFW-K99023-CA, Stephens' Kangaroo Rat Incidental Take, section 10(a) Permit, Cities of Riverside, Moreno Valley, Lake Elsinore, Hemet and Perris, Riverside County, CA.

Summary: Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

Dated: May 1, 1990.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 90-10435 Filed 5-3-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3762-6]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Chemical Waste Management, Inc. (CWM), Corpus Christi, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to CWM, for the Class I injection well located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately

demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by CWM, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection well at the Corpus Christi, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 7, 1990. A public hearing was held March 9, 1990, and a public comment period ended on March 23, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of April 23, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief, Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90-10423 Filed 5-3-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3762-7]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Disposal Systems, Inc., Deer Park, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Disposal Systems, Incorporated, for the Class I

injection wells located at Deer Park, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Disposal Systems, Incorporated, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Deer Park, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 7, 1990. A public hearing was held March 12, 1990, and a public comment period ended on March 23, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of April 23, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 90-10424 Filed 5-3-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3760-4]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Monsanto Chemical Company, Bayou Chocolate Plant, Alvin, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Monsanto Chemical Company, for the Class I injection well located at Bayou Chocolate Plant, Alvin, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Monsanto Chemical Company, of the specific restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection well at the Bayou Chocolate Plant, facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 20, 1990. A public hearing was held March 22, 1990, and a public comment period ended on April 6, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal process that can be applied to a final petition decision.

DATES: This action is effective as of April 20, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655-8150, (FTS) 255-7150.

Myron O. Knudson,
Director, Water Management Division (6W).

[FR Doc. 90-10425 Filed 5-03-90; 8:45 am]

BILLING CODE 6580-50-M

[FRL-3762-5]

Underground Injection Control Program Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection Sterling Chemicals, Texas City, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Sterling Chemicals, Incorporated, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Sterling Chemicals, Incorporated, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 16, 1990. A public hearing was held March 21, 1990, and a public comment period ended on April 2, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of April 23, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief, Water Supply

Branch, EPA—Region 6, telephone (214) 655-7150, (FTS) 255-7150.

Myron O. Knudson,
Director, Water Management Division (6W).
[FR Doc. 90-10426 Filed 5-3-90; 8:45 am]

BILLING CODE 6580-50-M

FEDERAL COMMUNICATIONS COMMISSION

Television Broadcasting; Territorial Exclusivity Ruling Texas Telecasting, Inc.

April 27, 1990.

In a pleading dated December 26, 1989, Texas Telecasting, Inc., licensee of television station KBMT, Beaumont, Texas, has requested a ruling that, for purposes of § 73.658(m) of the Commission's rules (broadcast non-network programming territorial exclusivity rule), Station KVHP, Lake Charles, Louisiana, should be considered a station in the same television market as Station KBMT. (MMB File 891226A)

In addition, in a pleading dated February 16, 1990, Rogue Television Corporation, proposed assignee of television station WHRC, Norwell, Massachusetts, has requested a ruling that Station WHRC should be considered a station in the Boston-Cambridge-Worcester television market. (MMB File 900116A)

Both requests cite the precedent created in *Press Television Corporation*, 4 FCC Rcd 8799 (1989), *pet. for recon. pend.*

Comments responsive to these petitions must be filed on or before May 30, 1990. Replies to these comments must be filed on or before June 14, 1990. Parties who have previously filed comments responsive to these petitions need not resubmit their pleadings.

The full texts of these requests are available for viewing and copying in the Public Reference room (Mass Media Bureau), room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800. Further information concerning this matter may be obtained from Michael Ruger, Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 90-10362 Filed 5-3-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION**Notice of 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 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: 202-009548-042.

Title: United States Atlantic and Gulf Ports/Eastern Mediterranean and North African Freight Conference.

Parties:

Farrell Lines, Inc.
Lykes Bros. Steamship Co., Inc.
Waterman Steamship Corporation
Pharos Lines S.A.
Levant Line S.A.

Synopsis: The proposed modification would provide that the presence of two members entitled to vote shall constitute a quorum. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 1, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-10427 Filed 5-3-90; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 90-14]

Bloomers of California, Inc. v. Ariel Maritime Group Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Bloomers of California, Inc. ("complainant") against Ariel Maritime Group, Inc., Javelin Lines, Charles Klaus & Co., Joshua Dean & Co., Maritimo Comercio Empresa, S.A., and Martyn Merritt (hereinafter collectively referred to as "respondents") was served April 30, 1990. Complainant alleges that respondents have violated sections 10(b)(6) and 10(b)(10) of the Shipping Act of 1984, 48 U.S.C. app. 1709(b)(6) and (10), through unfair and unjustly discriminatory acts involving

respondents' invoicing and attempting to collect excessive freight charges after complainant had paid the correctly invoiced freight charges.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by April 30, 1991, and the final decision of the Commission shall be issued by August 28, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-10374 Filed 5-3-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket R-0676]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Action.

SUMMARY: The Board is adopting the following changes to the Fedwire operating schedule, effective August 1, 1990, to: (1) Establish a 6 p.m.¹ uniform deadline for third-party funds transfers; (2) conform the book-entry securities service closing time in the Twelfth District with that in all other districts; and (3) establish an 8:30 a.m. uniform opening of the funds and book-entry securities transfer services. Uniform operating hours will promote competitive equity and increase the efficiency of financial markets.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION: For information regarding Fedwire funds transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Louise L. Roseman, Assistant Director (202/452-3874), or Tina Slater, Senior Financial Services Analyst (202/

¹ All times referenced in this notice are Eastern Time.

452-2539), Division of Federal Reserve Bank Operations. For information regarding Fedwire book-entry securities transfer operating hours, contact Bruce J. Summers, Associate Director (202/452-2231), Gerald D. Manypenny, Manager (202/452-3954), or Felicia Cataldo (202/452-2223) Financial Services Analyst, Division of Federal Reserve Bank Operations. For the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: In October, 1989, the Board issued for comment proposals to establish uniform Fedwire operating hours (54 FR 41681, October 11, 1989). The proposals were intended to promote competitive equity and increase the efficiency of financial markets. Included were proposals to: (1) Establish a uniform deadline for all third-party funds transfers, (2) segment the settlement period for the funds transfer service, (3) close the book-entry securities transfer service in the Twelfth District consistent with the rest of the nation, and (4) establish a uniform opening time for the funds transfer and book-entry securities transfer services.

Uniform Third-Party Funds Transfer Deadline.² The current Fedwire operating schedule establishes a 5 p.m. deadline for all interdistrict third-party funds transfers; however, the schedule allows districts the flexibility to establish later deadlines for intradistrict third-party funds transfers. Under this schedule, five districts allow depository institutions to send intradistrict third-party transfers after 5 p.m. (until 5:30 p.m. in one district and until 6 p.m. in four districts). This situation creates competitive inequities for depository institutions in other districts, especially since the New York money market is closed to other districts at 5 p.m. but is open to New York institutions until 6 p.m. In addition, West Coast depository institutions view the current 5 p.m. interdistrict deadline as restrictive since it occurs relatively early in the West Coast business day; a later interdistrict

² The "third-party" deadline applies to all regular funds transfers (type code 10) and all funds transfers with immediate advice (type code 12), regardless of whether these transfers include third-party information. Settlement transactions (type code 16) are transfers to adjust a reserve position, or to make or to adjust for net settlement transactions. Type code 16 messages can be originated at any time during Fedwire operating hours; however, after the third-party deadline, settlement transactions may not contain third-party information unless the third-party information relates to a respondent subject to reserve requirements (whether or not such respondent actually maintains reserves) or to a participant in the Clearing House Interbank Payments System (CHIPS).

third-party deadline would be more consistent with the business day in the Pacific time zone.

The Board proposed to eliminate the distinction between interdistrict and intradistrict third-party funds transfers by establishing a uniform 6 p.m. deadline for all third-party funds transfers. Under the proposal, the third-party funds transfer deadline would initially be extended to 5:45 p.m. for the eight districts that currently observe a 5 or 5:30 p.m. intradistrict deadline. The proposal indicated that a Systemwide 6 p.m. third-party deadline would be established after a six-month transition, barring adverse experience such as undesirable congestion of funds transfers late in the day which might lead to an increase in Fedwire extensions.

Overall, the commenters strongly supported a uniform third-party funds transfer deadline, indicating that it would eliminate the competitive advantage enjoyed by institutions in those districts that maintain later intradistrict deadlines. Several commenters also said that a uniform deadline would improve the efficiency of operations by eliminating those institutions' need to prioritize interdistrict transfers ahead of intradistrict transfers. Of those commenters that specified a preferred uniform third-party deadline, the majority favored 6 p.m.

On the issue of phasing-in the third-party funds transfer deadline, the commenters were divided as to the benefits of moving within a six-month period from a 5:45 p.m. to a 6 p.m. third-party deadline. Many commenters believed that a 5:45 p.m. transition time would not give an accurate picture of likely changes in funds transfer traffic patterns, because institutions in districts that currently have a 6 p.m. intradistrict deadline would continue to prioritize interdistrict transfers until a uniform third-party deadline were fully implemented.

Some commenters (generally from districts that currently provide a 60- to 90-minute settlement period) expressed concern that a 30-minute settlement period, from the 6 p.m. third-party deadline to the 6:30 p.m. Fedwire close, would not provide adequate time to manage their reserve positions and settle their accounts and could result in increased volatility in the federal funds market during this period. In analyzing these concerns, the Board reviewed the current message volume in each district during the settlement period. Data indicate that the volume of settlement transfers processed during this period, including volume in those districts that

provide a 90-minute settlement period, is relatively low. Most depository institutions send their settlement transfers earlier in the day, rather than waiting until the end of the day when interest rates are more volatile. Therefore, while market volatility may in fact increase in the final 30 minutes, the Board believes that the net impact on most depository institutions would be minimal. Further, depository institutions in four districts (New York, Philadelphia, Cleveland, and San Francisco) have operated successfully for some time with a 30-minute settlement period. The Board therefore believes that moving directly to a 6 p.m. third-party deadline should not pose appreciable risk to depository institutions' ability to settle in an orderly and timely fashion.

The Board carefully considered commenters' concerns that a 6 p.m. third-party funds transfer deadline would cause institutions to initiate transfers later in the day, particularly in light of the Board's recent proposals to reduce further payments system risk. Several commenters indicated, however, that uniform operating hours are a prerequisite to implementing daylight overdraft pricing, because uniform hours would facilitate the efficient movement of funds and would provide a standard basis for calculating overdraft charges. Commenters also believed that funds transfer volume would shift later in the day if daylight overdrafts were priced. Although it has not yet taken action on these payments system risk proposals, the Board believes that by introducing a uniform 6 p.m. third-party deadline now, rather than later, depository institutions would have time to gain experience with new, uniform hours and be able to adjust better to any volume shifts that this change might create.

Since any extension to the new funds transfer third-party deadline would likely cause an extension to the final funds transfer closing time due to the shorter settlement period, some commenters suggested that the Federal Reserve Banks should extend the third-party deadline only under very restrictive circumstances. The Federal Reserve believes it is important to minimize the frequency of Fedwire extensions, and will continue to scrutinize extension requests to ensure that extensions are granted only in appropriate circumstances.

After considering the issues raised by commenters, the Board has adopted a uniform third-party deadline of 6 p.m. for both interdistrict and intradistrict third-party funds transfers, without first

moving to the 5:45 p.m. transition time.³ A transition period would not provide an accurate measure of the effect of the final proposed closing time because institutions would continue to need to prioritize interdistrict traffic until a uniform third-party deadline was in place. In addition, the experience of institutions in the four districts that currently observe an intradistrict third-party deadline of 6 p.m. suggests that institutions can successfully manage their reserve positions within a 30-minute settlement period. Moving directly to a 6 p.m. third-party deadline also would establish uniformity more quickly and would preclude the need for depository institutions to change their operations and notify their customers twice within a six-month period.

Most commenters indicated that 60-days notice would provide sufficient time to implement a new third-party funds transfer deadline. The Board has provided, however, 90-days notice to facilitate an orderly conversion directly to a 6 p.m. third-party deadline.

Segmented-Settlement Period. The Board proposed restricting the last 15 minutes of the 30-minute settlement period to transfers sent to a receiving institution for its own account (and not for the account of a respondent institution), to facilitate a more orderly settlement of end-of-day reserve positions, especially in connection with a later interdistrict third-party transfer deadline. Overall, commenters were divided as to the benefits of this proposal. Several commenters indicated that there were no significant benefits to a segmented settlement period and that restricting receipt of transfers by affiliates and respondents in the last 15 minutes would further impede their ability to settle their accounts. Other commenters believed that a segmented settlement period would unnecessarily complicate the processing of funds transfers because new edit criteria and type codes would be needed to monitor respondent settlement activity, requiring changes to programs and operating procedures for both depository institutions and Reserve Banks.

Commenters supporting this proposal noted that, in contrast to transfers sent or received on its own behalf, a correspondent bank may not be able to predict accurately transfers involving its respondent accounts, thereby complicating its reserve account management. Since respondent institutions are generally sellers of

³ The deadline for off-line funds transfer requests would be 5:30 p.m., to allow for completion of processing by the 6 p.m. deadline.

federal funds, rather than buyers, they typically send, rather than receive, settlement transfers. To control the timing of settlement transfers sent on behalf of respondent institutions, correspondent institutions can establish an internal deadline for respondents that is earlier than the Fedwire deadline.

The Board has not adopted a segmented settlement period, due to the lack of strong industry support for this change and due to the specific concerns expressed by some commenters. Reserve Banks will monitor closely the implications of the revised operating hours on reserve account management, so that the Board can determine whether segmenting the settlement period should be reconsidered at a later date.

Book-Entry Securities Closing Time. Currently, the book-entry securities transfer service is scheduled to close nationwide at 2:30 p.m. for both interdistrict and intradistrict transfers, at 2:45 p.m. for dealer turnaround, and at 3 p.m. for reversal transactions.⁴ The Twelfth District, however, remains open for intradistrict securities transfers until 5:30 p.m., with a 6 p.m. closing time for intradistrict reversals. The Board proposed to conform the Twelfth District book-entry securities transfer service closing time with the closing time observed in other districts and sought comment on whether the current Twelfth District deadlines led to competitive inequities for institutions in other districts.

Commenters generally did not believe that the later Twelfth District deadlines have an adverse competitive effect on institutions in other districts. While commenters recognized that time zone differences shorten the effective business day for West Coast institutions, the majority of commenters, including the Twelfth District commercial bank commenters that addressed this proposal, supported a uniform national closing time. Several Twelfth District commenters indicated that the uniform closing of the book-entry service nationwide would improve the efficiency of a national service and be essential in an environment in which the Federal Reserve priced daylight overdrafts. Based on its analysis of the comments, the Board has established book-entry securities transfer closing times in the Twelfth District that conform to those of the other districts.

In the context of this proposal, some commenters suggested that the Federal Reserve adopt a later book-entry closing time Systemwide because the Reserve

Banks routinely extend the scheduled closing times to accommodate peak afternoon securities transfer volume. The Board will study the broader issue of book-entry closing times in light of evolving secondary market practices and other Federal Reserve initiatives.

Uniform Opening Times. Under the current operating schedule, Reserve Banks exercise flexibility in setting the opening times for the funds and book-entry securities transfer services. The funds transfer operating schedule currently provides that each district open for processing no later than 9 a.m.; eight districts regularly begin funds transfer operations as early as 8:00 a.m. The opening times for the Federal Reserve's book-entry securities transfer service are even more disparate, ranging from 7:45 a.m. to 11 a.m. The Board proposed the adoption of uniform opening times for the funds transfer and book-entry securities transfer services, and requested comment on whether both services should open at 8:30 a.m., or whether the book-entry securities transfer service opening time should be later than that for the funds transfer service.

The Board had adopted a uniform 8:30 a.m. opening time for both the funds and securities transfer services.⁵ Most commenters stated that these national services should have uniform operating hours. Further, a uniform operating schedule is consistent with the goal of providing a consistent level of service nationwide, and would facilitate a more efficient national federal funds market. If the Board were to adopt its recent proposal to price daylight overdrafts, uniform opening times would be necessary. It should be noted that adoption of uniform operating hours does not preclude Reserve Banks from opening the Fedwire service earlier on a discretionary basis in order to facilitate special market needs for the transfer of funds or securities.

On the question of whether the book-entry securities transfer service should open at the same time as, or later than, the funds transfer service, several commenters indicated that if the Federal Reserve were to price daylight overdrafts, the funds transfer service should open earlier than the book-entry securities transfer service so that depository institutions could arrange for covering funds prior to receiving securities. Although the proposal included a discussion of why it may be preferable to open the funds transfer service earlier, the majority of

commenters that addressed this question supported the same opening time for the funds and book-entry securities transfer services. Comments supporting the same opening time for both services included virtually all comments from money center banks and institutions clearing securities for primary dealers, as well as the majority of comments from regional banks, that addressed this issue.

The continuing evolution of the payments system and financial markets may lead to further changes to operating hours, such as earlier in the day opening of Fedwire, currently under review by Board and Reserve Bank staff. The Board believes that adoption of uniform operating hours would be an important step towards facilitating such changes.

Competitive Impact Analysis. The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.⁶ Under these procedures, the Board will assess whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board believes that the actions taken in this notice do not have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Other funds and securities transfer systems determine their operating hours. Indeed, the CHIPS opening time is currently earlier than the newly adopted Fedwire opening time. In addition, the adoption of the 6 p.m. third-party funds transfer closing time takes into account the need of CHIPS participants to transfer funds over Fedwire after the closing time of CHIPS. Therefore, the Board believes that the adoption of these uniform operating hours would not adversely affect the participants in other systems, such as CHIPS. Moreover, one of the primary objectives of adoption of these uniform operating hours proposal is to promote competitive equity among institutions that provide funds and book-entry securities transfer services via Fedwire to the public.

⁶ These procedures are described in the Board's policy statement titled "The Federal Reserve in the Payments System," which was revised in March 1990 (55 FR 11648, March 29, 1990).

⁴ To allow for completion of processing, Reserve Banks generally establish earlier deadlines for off-line book-entry securities transfer requests.

⁵ Reserve Banks may establish later opening times for off-line funds and book-entry securities transfer requests.

By order of the Board of Governors of the Federal Reserve System, April 30, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-10378 Filed 5-3-90; 8:45 am]

BILLING CODE 6210-01-M

[Docket R-0690]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on a proposal that Reserve Banks notify telephonically all depository institutions that do not have an electronic connection to Fedwire ("off-line institutions") of the receipt of incoming Fedwire funds transfers. The service would apply to all third-party funds transfers and to settlement transfers if the receiving institution acts in a correspondent capacity for a respondent institution. Telephone notice of settlement transfers to a receiving institution that does not maintain accounts for respondent institutions would continue to be an optional service. The fee for this service currently consists of a \$4.00 surcharge per transfer in addition to the basic transfer fee and is assessed to the off-line receiving institution. The Board believes that this change would facilitate the prompt crediting of beneficiaries and that notification of funds transfers received over Fedwire is consistent with the participants' expectation of Fedwire as a same-day payments system.

DATES: Comments must be submitted on or before July 3, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0690, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to room B-2223 between 8:45 a.m. and 5 p.m. All comments received at the above address will be included in the public comments file, and may be inspected in room B-1122 between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452-3874) or Julius Oreska, Manager (202/452-3878), Division of Federal Reserve Bank Operations; for the hearing impaired *only*:

Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The expectation of the parties to Fedwire

third-party¹ and settlement transfers is that payments will be completed on the same day they are initiated. On-line receivers of Fedwire funds transfers are notified electronically of all transfers received. Because off-line receivers of Fedwire funds transfers do not have an electronic connection with the Federal Reserve, notification of incoming transfers to these institutions is not necessarily made on the day of the transfer. While off-line receivers receive credit from their Reserve Bank on the day transfers are received, the depository institutions are unable to credit the beneficiary on the payment date unless they are notified on the day of receipt. Thus, from the standpoint of the beneficiary, the transfer is not complete until notice of receipt is provided. Approximately forty-five percent of institutions using Fedwire currently receive funds transfers off-line, although off-line transfers account for less than one percent of total Fedwire volume.

The Federal Reserve currently offers two optional services by which Reserve Banks provide telephone notice to off-line receivers of incoming funds transfers on the day of the transfer. These services help to ensure timely notification of incoming funds for off-line institutions, in order that they may make the funds available to their customers on a timely basis and in order to receive timely information to manage their reserve positions. If the Reserve Bank does not provide telephone notice of a transfer to an off-line institution, notification of the incoming transfer accompanies the institution's daily account statement, which is delivered either by courier or mail. Courier delivery occurs on the next business day; mail delivery usually occurs one or more days after the transfer.

The service offered to off-line receiving institutions is the "standing order" service. Under this service, the off-line receiver pays a surcharge to be notified telephonically of each incoming funds transfer. The Reserve Bank usually provides notice within one hour of receipt of the transfer. The receiving institution is assessed a surcharge per transfer (currently \$4.00) in addition to the basic transfer fee (currently \$.50).

A second service, the "immediate advice" (type code 12) service, enables the sender of the funds transfer to request that the Reserve Bank notify

¹ The term "third-party" funds transfer applies to all regular funds transfers (type code 10) regardless of whether these transfers include third-party information. Transfers involving foreign accounts (type code 15) would also be subject to the telephone notice requirement.

telephonically the off-line receiving institution of the receipt of a particular funds transfer. The sending institution identifies those transfers for which telephone notice should be made by using a specific type code. The sending institution is assessed the surcharge per transfer for this service.

The Board is requesting comment on a proposal that Reserve Banks notify telephonically all depository institutions that do not have an electronic connection to Fedwire of the receipt of incoming Fedwire funds transfers. The service would apply to all third-party funds transfers and to settlement transfers if the receiving institution acts in a correspondent capacity for a respondent institution. Telephone notice of settlement transfers to a receiving institution that does not maintain an account for another institution would continue to be an optional service. The fee for this service currently consists of a \$4.00 surcharge per transfer in addition to the basic transfer fee and is assessed to the off-line receiving institution.

The purpose of the proposed same-day notification of incoming funds transfers to receiving institutions is to promote efficiency in the payments system by providing timely information which permits prompt crediting of funds to the accounts of beneficiaries. The proposed pricing approach would assess the cost of providing this service to the party that decides to participate on Fedwire in an off-line mode.

Both the Expedited Funds Availability Act (12 U.S.C. 4001-4010) and the recently developed Article 4A to the Uniform Commercial Code² encourage prompt funds availability and timely notification to receiving institutions and the ultimate beneficiaries. Under section 4A-302 of Article 4A, a Reserve Bank would be required to execute funds transfers by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible. If a Reserve Bank executes a transfer in a manner that results in a delay in the payment to the beneficiary, the Reserve Bank would be liable for interest to either the originator or the beneficiary under section 4A-305(a) of Article 4A.

² Article 4A was recently approved by the National Conference of Commissioners on Uniform State Laws and the American Law Institute. Utah, West Virginia, Colorado, and Virginia have adopted Article 4A, which will become effective in Utah on April 23, 1990, West Virginia on June 5, 1990, and in Virginia and Colorado on January 1, 1991. Article 4A has been introduced in the legislatures of at least seven other states: California, Kansas, Massachusetts, Minnesota, Nebraska, New York, and Oklahoma.

The comments to this section indicate that a bank that delays the execution of a transfer would generally back-value the credit to the beneficiary's bank to compensate for the delay. This is consistent with the current Reserve Bank practice of crediting an off-line receiving institution on the day of the transfer, even though the institution may not receive notice of the transfer until one or more days later. The off-line receiving institution that credits its beneficiary on a day following the transfer day should similarly be compensating its customer by paying interest for the amount of the delay. Notification to receiving banks on the transfer day would permit them to credit their customer's account on the payment day, and not have to pay compensation to their customers; this would be consistent with Article 4A's objective to ensure timely payment to the beneficiary.

Further, Regulation CC (12 CFR part 229) requires that depository institutions make the proceeds of funds transfers available to their customers on the business day following the day the depository institution receives the transfer. Section 229.10(b) of Regulation CC defines receipt of an electronic payment as occurring when the bank receives both payment in finally collected funds and the payment instructions. Same-day notification of funds transfers would be consistent with the purpose of the Expedited Funds Availability Act to ensure prompt availability of funds.

The Board believes that off-line receiving institutions should be assessed the fee for telephone notice because their customers benefit from the more timely crediting of their account. Moreover, the decision not to establish an on-line connection with the Reserve Bank is within the control of the off-line receiving institutions, not the senders. The decision to participate in Fedwire off-line directly affects the institution's ability to receive prompt notification. In the current environment, however, the sending institution must often incur the cost of the telephone notice service to ensure that the receiving institution receives timely notification. Thus, if the proposal is adopted, the type code 12 immediate advice service, in which the sending bank instructs the Reserve Bank to notify the receiving bank, would no longer be necessary.

The Reserve Banks would attempt to notify off-line receiving institutions by telephone on the day the transfer is received, and would impose the surcharge on all transfers for which it attempted to provide notice. In addition,

a depository institution would be responsible for notifying the Reserve Bank if it maintains an account for another depository institution and thus would be subject to required telephone notice of settlement (type code 16) transfers. If the depository institution does not maintain an account for another institution, all incoming transfers would be for its account, not that of a beneficiary, and notice would not be required. An off-line institution would not be notified of incoming settlement transfers unless it indicated to the Reserve Bank that it maintained an account for another institution or it requested the optional standing order service for settlement transfers.

The Board expects some institutions subject to the telephone notice surcharge will reassess whether the off-line service continues to best meet their needs and the needs of their customers. Some off-line institutions may find it more efficient to establish electronic connections with the Reserve Bank rather than be assessed the surcharge for each transfer received. The Board estimates that several hundred off-line institutions currently can justify the cost of installing a Fedline terminal.³ In addition, the Reserve Banks are exploring lower cost electronic alternatives for providing funds transfer notification to low-volume institutions.

Competitive impact analysis. The Board recently formalized its procedures for assessing the competitive impact of changes that have a substantial effect on payments system participants.⁴ The Board believes that this proposal will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Specifically, the Board believes this action would have no effect on the operations of the Clearing House Interbank Payments System (CHIPS), because this system does not serve low-volume institutions and all CHIPS participants are on-line to that system. Correspondent institutions provide access to Fedwire to a number of small off-line institutions, and this proposal does not affect the correspondents' relationship with their respondent institutions.

³ Fedline refers to software provided by the Federal Reserve Banks and used by depository institutions with small and medium transfer volumes to access Federal Reserve services.

⁴ These procedures are described in the Board's policy statement titled "The Federal Reserve in the Payments System" (55 FR 31648, March 29, 1990).

By order of the Board of Governors of the Federal Reserve System, April 30, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-10379 Filed 5-3-90; 8:45 am]

BILLING CODE 6210-01-M

Bryn Mawr Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North Sixth Street, Philadelphia, Pennsylvania 19105:

1. *Bryn Mawr Bank Corporation*, Bryn Mawr, Pennsylvania; to engage *de novo* through Profit Research Consulting, Inc.,

Bryn Mawr, Pennsylvania, in management consulting services for nonaffiliated banks and depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation*, Roanoke, Virginia; to engage *de novo* through its subsidiary Dominion Bankshares CDC, Inc., Roanoke, Virginia, in investing, as a community development corporation, in low- to moderate-income housing projects, small business incubators, day care centers, mixed-use developments of vacant buildings and other community welfare projects, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Forest Bancorp*, Forest, Mississippi; to engage *de novo* through Bankers Service Corporation, Forest, Mississippi, in providing management consulting advice to nonaffiliated banks and nonbank depository institutions, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Ashton Bancorporation, Inc.*, Ashton, Illinois; to engage *de novo* in insurance activities in a town of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *United Texas Financial Corporation*, Wichita Falls, Texas; to engage *de novo* in acquiring loans for itself or for others of the type made by an agricultural lender pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-10380 Filed 5-3-90; 8:45 am]
BILLING CODE 6210-01-M

Eugene J. Metzger, et al.

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Eugene J. Metzger*, Arlington, Virginia; to acquire an additional 13 percent of the voting shares of Ballston Bancorp, Inc., Arlington, Virginia, and thereby indirectly acquire The Bank of Northern Virginia, Arlington, Virginia.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mike Broussard and Bob Veretto*, both of Levelland, Texas, and *John W. Soules*, Sundown, Texas; to each acquire 19.62 percent of the voting shares of Sundown Bankshares, Inc., Sundown, Texas, and thereby indirectly acquire Sundown State Bank, Sundown, Texas.

Board of Governors of the Federal Reserve System, April 30, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 90-10381 Filed 5-3-90; 8:45 am]
BILLING CODE 6210-01-M

Second National Financial Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 25, 1990.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Second National Financial Corporation*, Culpeper, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Second National Bank, Culpeper, Virginia.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *EuroHoldings, Inc.*, Coral Gables, Florida, to become a bank holding company by acquiring 99 percent of the voting shares of Transflorida Bank of Palm Beach, Boca Raton, Florida (formerly known as Transflorida Bank of Palm Beach, Boynton Beach, Florida).

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Century Bancshares, Inc.*, Eden Prairie, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Century Bank, National Association, Eden Prairie, Minnesota.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Cascade Bancorp*, Bend, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of the Cascades, Bend, Oregon.

Board of Governors of the Federal Reserve System, April 30, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-10382 Filed 5-3-90; 8:45 am]
BILLING CODE 6210-01-M

Univest Corporation of Pennsylvania et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Banking Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 25, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North Sixth Street, Philadelphia, Pennsylvania 19105:

1. *Univest Corporation of Pennsylvania*, Souderton, Pennsylvania; to acquire Pennview Savings Association, Souderton, Pennsylvania, and thereby engage in savings association activities, pursuant to § 225.25(b)(9) of the Board's Regulation Y; credit life and disability insurance activities, pursuant to § 225.25(b)(8); and the issuance and sale at retail of money

orders and similar consumer-type payment instruments, including traveler's checks, having a face value of not more than \$1,000, pursuant to § 225.25(b)(12) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to acquire Dollar Savings Association, New Castle, Pennsylvania, and thereby engage in savings and loan activities, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oxford Financial Corporation*, Addison, Illinois; to acquire the Hampton Park Corporation, Romeoville, Illinois, and thereby engage in acquiring and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 30, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10383 Filed 5-3-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-18]

Extension of Public Comment Period for Priority Data Needs on the Substances Phenol, Chloroethane, Carbon Tetrachloride and Isophorone

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service, Department of Health and Human Services.

ACTION: Extension of public comment period on the priority data needs for the substances: phenol, chloroethane, carbon tetrachloride and isophorone.

SUMMARY: This notice announces an extension of the public comment period for the priority data needs on the substances: phenol, chloroethane, carbon tetrachloride and isophorone. Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(i)), as amended by the Superfund Amendments and Reauthorization Act (Pub. L. 99-499), requires that ATSDR, in addition to other duties, must assure the initiation of a research program to fill identified

priority data needs for certain hazardous substances.

ATSDR announced the priority data needs for these four pilot substances in the *Federal Register* on March 28, 1990, (55 FR 11566) with a public comment period through May 14, 1990. This notice announces an extension of the public comment period through June 26, 1990, in order to allow the public a full 90 days to review and comment on these priority data needs.

DATES: Comments concerning the *Federal Register* notice of March 28, 1990, (55 FR 11566) must be received by June 26, 1990.

ADDRESSES: Comments on this notice should bear the docket control number ATSDR-18 and should be submitted to the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Comments on this notice will be available for public inspection at the Agency for Toxic Substances and Disease Registry, Building 37, Executive Park Drive, Atlanta, Georgia 30329, from 8 a.m. until 4:30 p.m., Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: The Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E-29, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephone: 404-639-0730.

SUPPLEMENTARY INFORMATION:

Administrative Record: ATSDR has established a public version of this record with materials pertaining to this notice (ATSDR docket control number-18). The public file is available for inspection during the times and at the address given in the Address section of this notice.

Dated: April 27, 1990.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 90-10416 Filed 5-3-90; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 86D-0334]

Estrogen Drug Product Labeling; Revocation of Guidelines; Availability of Labeling Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the guideline texts setting

forth professional and patient labeling for estrogen drug products. The guidelines are being revoked to allow the agency to provide more current assistance in the form of informal labeling guidance texts.

EFFECTIVE DATE: Effective May 4, 1990, labeling guidelines for the text of professional and patient package inserts for estrogen drug products are revoked and informal labeling guidance texts may be used.

ADDRESSES: Requests for a copy of the guidance texts should be sent to Phillip Corfman, Division of Metabolism and Endocrine Drug Products (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3510. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 9, 1987 (52 FR 37842), FDA announced the availability of revised guideline texts for professional and patient labeling for estrogen drug products. Any person could use these guidelines to meet the requirements of 21 CFR 310.515 for estrogen drug products and 21 CFR 201.56, 201.57, and 201.100 for professional labeling of prescription drug products.

In the same issue of the Federal Register (52 FR 37802), FDA proposed to revise the requirements for patient package inserts for estrogen drug products. The proposed requirements would enable patient package inserts to reflect more expeditiously current information about this class of drug products. The revised requirements for patient package inserts for estrogen drug products (21 CFR 310.515) appear in a final rule published elsewhere in this issue of the Federal Register. The agency has determined that the time required to finalize and announce revised guidelines prevents the agency from providing the most current medical information to manufacturers and others. Therefore, FDA is revoking the labeling guidelines.

In place of labeling guidelines, the agency will provide informal labeling guidance texts to assist persons in meeting labeling requirements. FDA has decided to issue informal guidance texts rather than guidelines to enable manufacturers and others to receive the

most current information available to the agency in the most timely manner possible. Labeling guidance texts are informal documents issued under 21 CFR 10.90(b)(9). They do not bind or otherwise obligate the agency or a person referring to them and are not formal agency opinions. The agency does not require manufacturers printing professional and patient package inserts to follow the guidance labeling text. Manufacturers are free to use an alternative or modified approach, although manufacturers are encouraged to consult the Division of Metabolism and Endocrine Drug Products (address above) before drafting alternative labeling so that any differences can be resolved in advance. A person may wish to review the informal labeling guidance texts for estrogen drug products for assistance in meeting the labeling requirements at 21 CFR 310.515 for patient package inserts and at 21 CFR 201.56, 201.57, and 201.100 for professional labeling of prescription drug products. However, it should be noted that under § 314.70 (21 CFR 314.70), a holder of an approved application for a new drug is required to submit a supplemental application to obtain approval for a change in the text of professional labeling or patient labeling.

Interested persons may submit written comments concerning the revocation of the guideline to the Dockets Management Branch (address above). Comments will be considered in determining whether reinstating the guideline is warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document.

Dated: March 29, 1990.

Ronald G. Chesemore,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 90-10348 Filed 5-3-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Project Grants for Renovation or Construction of Non-Acute Care Intermediate and Long-Term Care Facilities for Patients With Acquired Immune Deficiency Syndrome (AIDS)

AGENCY: Health Resources and Services
Administration, PHS, DHHS.

ACTION: Notice of availability of funds.

SUMMARY: The Bureau of Maternal and
Child Health and Resources

Development (BMCHRD), Health
Resources and Services Administration
(HRSA) announces that Fiscal Year 1990
funds are available for project grants for
the renovation or construction of non-
acute care, intermediate and long-term
care facilities for patients with AIDS or
other Human Immunodeficiency Virus
(HIV) related conditions. Funds were
appropriated for the purpose by Public
Law 101-166 under the authority of
section 1610(b) of the Public Health
Service (PHS) Act.

DATES: To receive consideration,
applications for the renovation or
construction of facilities for patients
with AIDS or other HIV-related
conditions must be received by the close
of business July 3, 1990, by Ms. Dorothy
Hodgkin at the address below
Applications will meet the deadline if
they are either: (1) Received on or before
the deadline date; or (2) postmarked on
or before the deadline date, and
received in time for submission to the
review committee. A legibly dated
receipt from a commercial carrier or U.S.
Postal Service will be accepted instead
of a postmark. Private metered
postmarks will not be acceptable as
proof of timely mailing. Hand delivered
applications must be received by 5 p.m.,
July 3, 1990. Grant applications that are
received after the deadline date will be
returned to the applicant.

FOR FURTHER INFORMATION CONTACT:
Additional information relating to
technical and program issues may be
obtained from Ms. Katharine Buckner,
Office of Health Facilities, Bureau of
Maternal and Child Health and
Resources Development, Parklawn
Building, room 11A-10, 5600 Fishers
Lane, Rockville, Maryland 20857, (301)
443-0271. Grant applications and
additional information regarding
business, administrative or fiscal issues
related to the awarding of grants under
this Notice may be requested from Ms.
Dorothy Hodgkin, 12300 Twinbrook
Parkway, suite 100A, Rockville,
Maryland 20852, (301) 443-1440.
Applicants for grants will use Form PHS
5161-1, with revised face sheet,
Standard Form 424, approved under
OMB Control Number 0348-0043.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

Public Law 101-166 provides funds for
grants under the authority of section
1610(b) of the PHS Act, for the
renovation or construction of non-acute
care, intermediate and long-term care
facilities for patients with AIDS or other
HIV-related conditions. Section 1610(b)
requires that such grants will provide

services for patients with AIDS or other HIV-related conditions and that the amount of any grant may not exceed 80 percent of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 percent of such costs. (Urban or rural poverty area is defined as a medically underserved area designated by the Secretary (42 CFR 51c.102).) For information regarding the current medically underserved area list, contact Mr. Richard C. Lee, Director, Office of Shortage Designation, room 4-101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, or telephone (301) 443-6932.

The objective of this funding is to support the construction and/or renovation of facilities that provide a comprehensive and cost-effective approach to non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions. Examples of such a project may include:

(1) Projects for the renovation of existing traditional health care facilities such as hospitals, nursing homes, or hospices. For example, funds might be used to convert a small number of existing beds (i.e., 5-10) or to expand a facility to include several new beds for AIDS patients;

(2) Projects for the construction of new health care facilities to provide comprehensive intermediate and/or long-term care for some or all of the various stages of illness of an HIV-infected individual. Services may include, among others, outpatient care, skilled nursing care and hospice care; and

(3) Projects for the renovation of existing facilities other than traditional health care facilities, such as residential housing.

Availability of Funds

A total of \$4,113,000 is available in Fiscal Year 1990 to be awarded for the renovation or construction of non-acute care, intermediate and long-term care facilities for AIDS patients. It is anticipated that the minimum amount of a grant will be \$100,000.

Eligible Applicants

To be eligible, applicants must: (1) Be a public or private non-profit entity; (2) have a source of funding to meet the non-Federal portion of the eligible construction cost; (3) provide non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions in conjunction with the project; (4) demonstrate that health

care services, under the general direction of a physician, are an essential part of the programmatic scope of the project and will be routinely provided in space at the facility; (5) document linkages with other U.S. Health and Human Services funded programs and specialized State-Local funded HIV services in the community; and (6) be located in a Metropolitan Statistical Area with over 400 cumulative cases of AIDS, as reported by The Centers for Disease Control as of January 31, 1990 (see appendix A.).

Further, applicants must agree in writing to provide:

(1) An assurance that, after such application is approved, the facility or portion thereof to be constructed or renovated will be made available to persons residing or employed in the area served by the facility who need the services offered by the facility, in accordance with 42 CFR part 124, subpart G; and

(2) An assurance that a reasonable volume of services will be available to persons unable to pay for care in the facility or the portion thereof which is to be constructed or renovated, in accordance with 42 CFR part 124, subpart F (OMB Clearance Number 0915-0077).

A condition of the grant award will be, in part, that before grant funds can be released, the grantee must:

(1) Record the notice of the Federal interest and grant recovery rights at its local land records office and provide a copy of the official recording to the PHS Grants Management Office in the grantee's respective region.

(2) Provide a statement from the lessor to the Regional Grants Management Office (if the property is to be leased) that it is understood that there will be a notice of the Federal interest and grant recovery rights at the local land records office.

Evaluation Criteria

To receive an award, applicants must demonstrate their ability to provide health care services which meet the need for non-acute care, intermediate and/or long-term care for patients with AIDS or other HIV-related conditions. Projects will be selected on a competitive basis by an objective review committee based on the following evaluation criteria:

(1) Applicant's qualifications and experience in providing health care and treatment to AIDS/HIV patients;

(2) Clearly defined goals and objectives with the specific activities required to accomplish the goals of the proposed project;

(3) A clearly documented needs assessment which justified the scope of services proposed by the project;

(4) The reasonableness and justification for the itemized costs in the construction budget;

(5) Documentation of reimbursement sources and other funding sources sufficient to support program operations and to maintain the ongoing financial viability of the project after the construction has been completed;

(6) The ability of the applicant to provide more than the minimally required matching amount of the cost for the construction project;

(7) The appropriateness of the project design, facility construction/renovation plans and time frames for completion of the project;

(8) A plan for case management to assure the coordination of health services for the patients with AIDS or other HIV-related conditions. At a minimum, case management should: (a) Provide a confidential identification system that establishes which medical and support services the client is utilizing; and (b) provide consultation to clients on the availability of medical services, community-based treatment alternatives and other support services;

(9) Letters of support or other documents from State and/or local community organizations and health care providers who render services to patients with AIDS or other HIV-related conditions, validating the need for the proposed services and project. Projects which will be located in the service area of a HRSA funded AIDS Service Demonstration Project must also submit a letter of endorsement from that project (See appendix B.);

(10) The quality and scope of medical care as well as qualifications of the staff who will ensure appropriate medical care of patients with AIDS or other HIV-related conditions; and

(11) Demonstration of the applicant's intent to maintain the portion of the facility receiving this Federal assistance exclusively for AIDS-related care for a period of twenty years.

Technical Assistance Workshops

The Bureau will conduct two program technical assistance workshops to answer questions from potential applicants. The workshops will be held soon after publication of this Federal Register Notice at the following locations:

Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Federal Office Building, 50 United Nations Plaza, (Seventh and Market Street), San Francisco, CA 94102.

Applicants who wish to attend a workshop should contact Ms. Katharine Buckner, at (301) 443-0271, for the schedule of dates and times. Applicants must confirm their participation as to which workshop they will attend and the number of individuals that will attend. Expenses incurred by the workshop attendees will not be reimbursed by the Federal Government. Participation in the technical assistance workshops does not assure approval and funding of prospective applications.

Allowable Costs

A successful applicant under this Notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and PHS applicable to grants; the applicable Office of Management and budget (OMB) circular for public and private non-profit grantees; and appendix II of the PHS Grants Policy Statement applicable to construction.

Other Award Information

The grant may be terminated for cause if the grantee materially fails to comply with the terms and conditions of the grant. Grants awarded under this notice are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of contact (SPOC) and follow their instructions prior to the submission of an application.

The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for section 1610(b) is 13.887.

Dated: March 23, 1990.

Robert G. Harmon,
Administrator.

Appendix A—Metropolitan Statistical Areas With More Than 400 Cumulative Cases of AIDS as reported to the Centers for Disease Control as of January 31, 1990

1. New York, NY
Bronx
Kings

- New York
Putnam
Queens
Richmond
Rockland
Westchester
2. Los Angeles-Long Beach, CA
Los Angeles
3. San Francisco, CA
Marin
San Francisco
San Mateo
4. Newark, NJ
Essex
Morris
Sussex
Union
5. Chicago, IL
Cook
Du Page
McHenry
6. Houston, TX
Fort Bend
Harris
Liberty
Montgomery
Waller
7. Washington, DC-MD-VA
District of Columbia
Calvert, MD
Charles, MD
Frederick, MD
Montgomery, MD
Prince George's, MD
Arlington, VA
Loudoun, VA
Stafford, VA
Alexandria, VA
Fairfax, Fairfax City + Falls Church, VA
Prince William, Manassas + Manassas Park, VA
8. San Juan, PR
San Juan
Bayamon
Canovanas
Carolina
Catano
Guaynobo
Loiza
Toa Baja
Trujillo Alto
9. Miami-Hialeah, FL
Dade
10. Philadelphia, PA-NJ
Burlington, NJ
Camden, NJ
Gloucester, NJ
Bucks, PA
Chester, PA
Delaware, PA
Montgomery, PA
Philadelphia, PA
11. Atlanta, GA
Barrow
Butts
Cherokee
Clayton
Cobb

- Coweta
De Kalb
Douglas
Fayette
Forsyth
Fulton
Gwinnett
Henry
Newton
Paulding
Rocksdale
Spalding
Walton
12. Boston-Lawrence-Salem, Lowell-Brockton, MA
Essex
Middlesex
Norfolk
Plymouth
Suffolk
13. Dallas, TX
Collin
Dallas
Denton
Ellis
Kaufman
Rockwall
14. San Diego, CA
San Diego
15. Ft. Lauderdale-Hollywood, Pompano Beach, FL
Broward
16. Jersey City, NJ
Hudson
17. Tampa-St Petersburg-Clearwater, FL
Hernando
Hillsborough
Pasco
Pinellas
18. Oakland, CA
Alameda
Contra Costa
19. Baltimore, MD
Anne Arundel
Baltimore
Carroll
Harford
Howard
Queen Anne's
Baltimore City
20. Nassau-Suffolk, NY
Nassau
Suffolk
21. Detroit, MI
Lapeer
Livingston
Macomb
Monroe
Oakland
St Clair
Wayne
22. Seattle, WA
King
Snohomish
23. West Palm Beach-Boca Raton-Delray Beach, FL
Palm Beach
24. Denver, CO

- Adams
Arapahoe
Denver
Douglas
Jefferson
25. New Orleans, LA
Jefferson
Orleans
St Bernard
St Charles
St John the Baptist
St Tammany
26. Bergen-Passaic, NJ
Bergen
Passaic
27. Anaheim-Santa Ana, CA
Orange
28. Kansas City, MO
Johnson
Leavenworth
Miami
Wyandotta
Cass
Clay
Jackson
Lafayette
Platta
Ray
29. Phoenix, AZ
Maricopa
30. Riverside-San Bernadino, CA
Riverside
San Bernadino
31. San Antonio, TX
Bexar
Comal
Guadalupe
32. Middlesex-Somerset-Hunterdon, NJ
Hunterdon
Middlesex
Somerset
33. Minneapolis-St Paul, MN-WI
Anoka, MN
Carver, MN
Chicago, MN
Dakota, MN
Hennepin, MN
Isanti, MN
Ramsey, MN
Scott, MN
Washington, MN
Wright, MN
St Croix, WI
34. Portland, OR
Clackamas
Multnomah
Washington
Yamhill
35. St. Louis, MO-IL
Clinton, IL
Jersey, IL
Madison, IL
Monroe, IL
St Clair, IL
Franklin, MO
Jefferson, MO
St Charles, MO
St Louis, MO
St Louis City, MO
36. San Jose, CA
Santa Clara
37. Sacramento, CA
El Dorado
Placer
Sacramento
Yolo
38. Orlando, FL
Orange
Osceola
Seminole
39. Monmouth-Ocean, NJ
Monmouth
Ocean
40. Jacksonville, FL
Clay
Duval
Nassau
St Johns
41. Austin, TX
Hays
Travis
Williamson
42. New Haven-Waterbury-Meriden, CT
New Haven
43. Cleveland, OH
Cuyahoga
Geauga
Lake
Medina
44. Ft Worth-Arlington, TX
Johnson
Parker
Tarrant
45. Bridgeport-Stamford-Norwalk-
Danbury, CT
Fairfield
46. Pittsburgh, PA
Allegheny
Fayette
Washington
Westmoreland
47. Hartford-New Britain-Middletown-
Bristol, CT
Hartford
Middlesex
Tolland
- Appendix B—AIDS Service
Demonstration Projects Directory**
- Serving Phoenix, Arizona*
Maricopa County Department of Health
Services, 1825 East Roosevelt,
Phoenix, AZ 85006, Judith Hartner,
MD, Acting Assistant Director for
Community Health Services, (602)
258-6381.
- Serving Los Angeles-Long Beach,
California*
Los Angeles County Department of
Health Services, AIDS Program Office,
313 N. Figueroa, Rm. 1014, Los
Angeles, CA 90012, Robert
Frangenberg, (213) 974-7803.
- Serving San Diego, California*
Department of Health Services, P.O. Box
85524, San Diego, CA 92138. Binnie
- Calendar, Chief, Office of AIDS
Coordination, (619) 495-5477.
- Serving San Francisco-Oakland,
California*
San Francisco Department of Public
Health, 25 Van Ness Avenue, 5th
floor, San Francisco, CA 94102,
George Rutherford, M.D., Director,
AIDS Office, (415) 554-9000.
- Serving Santa Ana-Anaheim-Garden
Grove, California*
County of Orange Health Care Agency,
515 N. Sycamore, Santa Ana, CA
92701, Penny, C. Weismuller, M.D.,
AIDS Coordinator, (714) 834-2015.
- Serving Denver-Boulder, Colorado*
City Council of Denver, 777 Bannock
Street, Denver, CO 80240, Adam
Meyers, M.D., (303) 893-7270.
- Serving Miami, Florida*
Jackson Memorial Hospital, 1611 NW
12th Avenue, Miami, FL 33316, Philip J.
Plummer, Administrator, AIDS
Program, (305) 549-7744.
- Serving Ft. Lauderdale-Holloywood,
Florida*
Northwest Health Center, 624 Northwest
15th Way, Fort Lauderdale, FL 33311,
Jasmin Shirley Moore, (305) 467-4532.
- Serving West Palm Beach-Boca Raton,
Florida*
Comprehensive AIDS Program of West
Palm Beach, 3706 Broadway, West
Palm Beach, FL 33407, Shauna M.
Dunn, RN, MSC, (407) 881-9040.
- Serving Atlanta, Georgia*
AIDS Atlanta, 1132 W. Peachtree Street,
Atlanta, GA 30309, Sandra L.
Thurman, (404) 872-0600.
- Serving Chicago, Illinois*
AIDS Foundation of Chicago, 1332 N.
Halsted Street, Chicago, IL 60622,
Marcia J. Lipetz, PhD, (312) 642-5454.
- Serving New Orleans, Louisiana*
Associated Catholic Charities of New
Orleans, New Orleans AIDS Project,
1231 Prytania Street, New Orleans, LA
70130, Rebecca Loma, MSW, BCSW,
(504) 523-3755, ext. 324.
- Serving Boston, Massachusetts*
Fenway Community Health Center, 93
Massachusetts Avenue, Boston, MA
02115, Dale Orlando, Executive
Director, (617) 267-0900.
- Serving Baltimore, Maryland*
Maryland Department of Health and
Mental Hygiene, 201 West Preston

Street, Baltimore, MD 20210, Eric Fine, MD, MPH, (301) 225-6804.

Serving Detroit, Michigan

United Community Services of Metropolitan Detroit, 1212 Griswold, Detroit, MI 48226, Geneva Jones Williams, (313) 226-9400.

Serving Jersey City, New Jersey

County of Hudson, 595 Newark Avenue, Jersey City, NJ 07306, Carol Ann Wilkson, (202) 795-6933.

Serving Newark, New Jersey

New Jersey State Department of Health, Division of AIDS Prevention & Control, CN 363, 363 West State Street, Trenton, NJ 08625, Steve Young, Director, Hospital/Post Hospital Support Services Unit, (609) 984-6000.

Serving Nassau-Suffolk, New York

Nassau-Suffolk Health Systems Agency, 1537 Old Country Road, Plainview, NY 11803, Linda Wenzel, (516) 293-5740.

Serving New York, New York

The AIDS Service Delivery Consortium of New York City, 5 Penn Plaza, Room 429, New York, NY 10001, Sally Kohn, (212) 268-4510, ext. 411.

Serving Philadelphia, Pennsylvania, and Camden, New Jersey

Philadelphia Health Management Corporation, 260 S. Broad Street, 20th floor, Philadelphia, PA 19102, John Loeb, (215) 985-2502.

Serving San Juan, Puerto Rico

Puerto Rico Department of Health, Box 70184, San Juan, Puerto Rico 00936, Jose Marti-Nunez, M.D., (809) 766-1616.

Serving Dallas-Fort Worth, Texas

AIDS ARMS Network, Community Council of Greater Dallas, 2727 Oak Lawn, Suite 107, Dallas, TX 75219, Warren W. Buckingham, (214) 521-5191.

Serving Houston, Texas

Harris County Hospital District, 726 Gillette, Houston, TX 77019, R. King Hillier, (713) 652-1200.

Serving Seattle-Everett, Washington

AIDS Health Service Program, 1116 Summit Avenue, suite 200, Seattle, WA 98101, Patricia McInturff, (206) 296-4649.

Serving Washington, D.C.

D.C. Department of Human Services, Commission of Public Health, 1660 L Street, NW., suite 700, Washington,

DC 20036, Jane Silver, MPH, Chief, Office of AIDS Activities, (202) 673-3679.

[FR Doc. 90-10344 Filed 5-3-90; 8:45 am]

BILLING CODE 4160-15-M

Office of Human Development Services

Federal Council on the Aging; of Meeting

Agency holding the meeting: Federal Council on the Aging.

Time and Date: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, May 16, 1990, and begins at 9 a.m. and ends at 5 p.m., on Thursday, May 17, 1990.

Place: On Wednesday, May 16, from 9 a.m. to 12 noon, in the Stonehenge Conference Room, Sixth Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC, and from 2 p.m. to 5 p.m., in Room 303-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. On Thursday, May 17, from 9 a.m. to 5 p.m., in Room 303-A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Status: Meeting is open to the public. (Due to building security names of attendees should be called into FCoA office prior to meeting dates).

Contact person: Kevin W. Parks, Room 4280, Wilbur Cohen Federal Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the Presidents, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its third quarterly meeting on May 16 and 17, 1990, from 9 a.m. to 5 p.m. respectively. On May 16, the morning session will be held in the Stonehenge Conference Room, 6th Floor, HHH Building. For the afternoon session, the meeting will be moved to Room 303-A, HHH Building. On May 17, the meeting will be held in Room 303-A, HHH, 200 Independence Avenue, SW., Washington, DC 20201.

The agenda will include: remarks from various officials or staff representatives from the Department of Health and Human Services, the United States Congress, and the Pepper Commission, on the various options and proposals

being offered or developed to address the Nation's growing crisis in long-term health care, particularly as they would affect older Americans; remarks by Dr. Joyce T. Berry, Commissioner, U.S. Administration on Aging; and a tour by the Council of a local senior center.

The rest of the two-day meeting will be devoted to discussion of the FCoA 1989 Annual Report to the President, introduction of new Members, FCoA committee meetings and reports, discussion of presentations and formulation of recommendations, and other matters as they relate to the aging population.

Dated: April 30, 1990.

Kevin W. Parks,

Executive Director, Federal Council on the Aging.

[FR Doc. 90-10419 Filed 5-3-90; 8:45 am]

BILLING CODE 4130-01-M

National Institutes of Health

National Cancer Institute; Meeting—Board of Scientific Counselors, Division of Cancer Prevention and Control

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, May 16-17, 1990, Bethesda Marriott Hotel, Grand Ballroom, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on May 16 from 8:30 a.m. to approximately 3 p.m., and again on May 17 from 8:30 a.m. until adjournment to discuss administrative details and for the discussion and review of concepts and programs within the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public on May 16 from 3 p.m. to approximately 5 p.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31,

room 10A06, National Institutes of Health, Bethesda, Maryland 20892-3100 (301/496-5708) will provide a summary of the meeting and a roster of committee members, upon request.

Other information pertaining to this meeting can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza-North, room 318, Bethesda, Maryland 20892 (301-496-8526), upon request.

Dated: April 20, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-10478 Filed 5-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting

Notice is hereby given of the "National Commission on Sleep Disorders Research" meeting. The meeting is being sponsored by the National Institute on Aging. It will be held on May 31 and June 1, 1990 from 8:30 a.m. to 5 p.m., at the National Institutes of Health, Federal Building, Conference room B119, located at 7550 Wisconsin Avenue, Bethesda, Maryland. The meeting is open to anyone who is interested in Sleep Disorders and the Commission's proceedings. This will be a working meeting at which Commission members will develop plans for the program. Further information on the program may be obtained from: Gladys Bohler, NIA/NNA, 9000 Rockville Pike, Building 31C, room 5C35, Bethesda, Maryland 20892; (301) 496-9350.

Dated: April 27, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-10376 Filed 5-3-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Amended Notice of Meeting

Notice is hereby given of a change in the May 14 and 15, 1990, meeting of the National Deafness and Other Communication Disorders Advisory Council, National Institute on Deafness and Other Communication Disorders, which was published in the *Federal Register* on April 27, 1990, 55 FR 17824.

It was decided that a working group would convene before the council meeting to review a number of research grant applications with high program relevance and report to the full Council on May 14, 1990.

This meeting will be open to the public from 1 p.m. to 1:30 p.m. to discuss

administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) of title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting will be closed to the public from 1:30 p.m. to adjournment at 6 p.m. for the review of individual research grant applications with high program relevance. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Working Group's meeting and a roster of participants may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room 1B62, National Institutes of Health, Bethesda, Maryland 20892, 301-496-7243, upon request.

Dated: May 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-10479 Filed 5-03-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on April 13, 1990.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Questionnaire About Employment Or Self-Employment Outside The United States—0960-0050—The information collected on the form SSA-7163 is used by the Social Security Administration to determine whether work performed by beneficiaries outside the United States should cause a reduction in their monthly benefits. The affected public is comprised of beneficiaries who may be subject to such deductions because of

employment or self-employment outside the United States.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

2. Request for Review of Hearing Decision/Order—0960-0277—The information collected on the form HA-520 is used by the Social Security Administration to afford claimants their statutory right under the Social Security Act to request review of a hearing decision regarding their claim. The affected public consists of claimants who received an unfavorable hearing decision and request review of same.

Number of Respondents: 70,600.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 11,767 hours.

3. Claimant's Recent Medical Treatment—0960-0292—The information collected on the form HA-4631 is used by the Social Security Administration to provide a complete up-to-date medical history of a claimant for benefits who has requested a hearing. The respondents are those claimants who request a hearing and do not have a complete medical history.

Number of Respondents: 104,346.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,696 hours.

4. Statement of Employer—0960-0030—The information collected on the form SSA-7011 is used by the Social Security Administration to substantiate a worker's allegation of wages paid when those wages do not appear in SSA's records and the worker has no proof that they were paid. The affected public consists of certain employers for whom wages are alleged but not posted.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 308,333 hours.

5. Notice Regarding Substitution of Party Upon Death of Claimant—0960-0288—The information collected on the form HA-539 is used by the Social Security Administration to determine who is a qualified individual to be made a substitute party to proceed with the claim of a deceased claimant whose application for Social Security benefits has been denied. The respondents are persons who wish to pursue claims on behalf of deceased claimants.

Number of Respondents: 32,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 2,666 hours.

OMB Desk Officer: Allison Herron.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 90-10343 Filed 5-3-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-70]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: May 4, 1990.

ADDRESS: For further information, contact James Forsberg, Room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such

agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order required HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the *Federal Register* identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested

provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's *Federal Register* Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671 Pentagon, Washington, DC 20360-2600; (202) 693-4583; Corps of Engineers: Bob Swieconeck, HQ-US Army Corps of Engineers, Attn: CERE-MN, 20 Massachusetts Avenue NW., Washington, DC 20415-1000; (202) 475-2133; GSA: James Folliard, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 535-7067; Dept. of Agriculture: Marsha Pruitt, USDA, 14th and Independence Avenue SW., South Bldg., Room 1566, Washington, DC 20250; (202) 447-3338. (These are not toll-free numbers.)

Dated: April 26, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

Suitable Land (by State)

Kentucky

Tract 4628

Barkley Lake, Kentucky and Tennessee Canton, KY, Co: Trigg
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619-B

Barkley Lake, Kentucky and Tennessee Canton, KY, Co: Trigg
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403-B

Barkley Lake, Kentucky and Tennessee Eddyville, KY, Co: Lyon
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized

Comment: 0.70 acres; wooded; subject to utility easements.

Tract 241-B

Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 319011624
Status: Excess

Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237

Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 319011625
Status: Excess

Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215-B

Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011626
Status: Excess

Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233

Barkley Lake, Kentucky and Tennessee
Grand Rivers, KY, Co: Lyon
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 319011627
Status: Excess

Comment: 1.00 acres; wooded; subject to utility easements.

New York

Land

Almond Dam and Reservoir
Portion of Almond Dam and Reservoir
Hornellsville, NY, Co: Steuben
Location: 2.5 miles NE of Almond, New York, on south side of County Road #66, just before intersection of Town Road
Landholding Agency: GSA
Property Number: 549010053
Status: Excess
Comment: 18.05 acres; leased for farmland; potential utilities; most recent use—civil works project
GSA No. 2-D-NY-788

Suitable Buildings (by State)

Idaho

Motel Unit
(See County), ID, Co: Valley
Location: Within Cabin Creek area of Frank Church River of No Return Wilderness area, Payette National Forest, Idaho
Landholding Agency: Agriculture
Property Number: 159010002
Status: Excess
Comment: 1480 sq. ft.; log frame; one story; off-site removal only.

Kentucky

Bldg. 1
Kentucky River Lock and Dam
Carrollton, KY, Co: Carroll

Location: Take I-71 to Carrollton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Bldg. 2
Kentucky River Lock and Dam

Carrollton, KY, Co: Carroll
Location: Take I-71 to Carrollton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

New York

Federal Building
35 Ryerson Street
New York, NY, Co: King's
Landholding Agency: GSA
Property Number: 549010054
Status: Underutilized
Comment: 9 story with basement; wood and brick frame; licensed to New York City to occupy 5th and 6th floors.

Unsuitable Land (by State)

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline, LA, Co: Webster
Landholding Agency: Army
Property Number: 219013923
Status: Unutilized
Reason: Other
Comment: barrow pit, predominately under water.

Maryland

Tract A-104-E-2
Former Washington Baltimore Defense Area
Nike Battery BA-03
Jacksonville, MD, Co: Baltimore
Landholding Agency: GSA
Property Number: 549010048
Status: Surplus
Reason: Other
Comment: site clearance easement
GSA No. 4-D-MD-536A.

Tract A-104-E-3
Former Washington Baltimore Defense Area
Nike Battery BA-03
Jacksonville, MD, Co: Baltimore
Landholding Agency: GSA
Property Number: 549010049
Status: Surplus
Reason: Other
Comment: site clearance easement
GSA No. 4-D-MD-536A.

Tract A-104-E-5
Former Washington Baltimore Defense Area
Nike Battery BA-03
Jacksonville, MD, Co: Baltimore
Landholding Agency: GSA
Property Number: 549010050
Status: Surplus
Reason: Other
Comment: line of site easement

GSA No. 4-D-MD-536A.

Tract A-104-E-6
Former Washington Baltimore Defense Area
Nike Battery BA-03
Jacksonville, MD, Co: Baltimore
Landholding Agency: GSA
Property Number: 549010051
Status: Surplus
Reason: Other
Comment: utility easement
GSA No. 4-D-MD-536A.

Tract A-104-E-7
Former Washington Baltimore Defense Area
Nike Battery BA-03
Jacksonville, MD, Co: Baltimore
Landholding Agency: GSA
Property Number: 549010052
Status: Surplus
Reason: Other
Comment: line of site easement
GSA No. 4-D-MD-536A.

New Mexico

Gallup Indian Center
200 West Maxwell
Gallup, NM, Co: McKinley
Landholding Agency: GSA
Property Number: 549010055
Status: Surplus
Reason: Floodway
GSA No. 7-I-NM-548.

Universe of Properties:

Total=19
Suitable=12
Suitable Buildings=4
Suitable Land=8
Unsuitable=7
Unsuitable Buildings=0
Unsuitable Land=7
Number of Resubmissions=0

[FR Doc. 90-10270 Filed 5-3-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-030-90-4333-11; Closure Notice NV-030-90-05]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands during the official running of three competitive vehicle events. This action is being taken to provide for the public's safety and to protect adjacent resources. The following events are included in this notice:

May 12 and May 13, 1990—Western States Racing Association, Virginia City Grand Prix—Permit Number NV-03516-90-04

May 27, 1990—Yokohama/Valley Off-Road Racing Association Yerington 400 Off-Road Race—Permit Number NV-03516-90-05

June 2 and 3, 1990—Carson Valley Rally, Sports Car Club of America Reno Region—Permit Number NV-03516-90-06

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885-6161.

SUPPLEMENTARY INFORMATION: A map of each closure area can be obtained from Fran Hull at the contact address. The event permittee is required to clearly mark and monitor the event course during the closure period. Specific information on each event is as follows:

1. Western States Racing Association Virginia City Grand Prix—Permit Number NV-03516-90-04. This event is located on roads and trails near Virginia City, Nevada, in Lyon, Storey and Washoe Counties within T. 17 N., R. 20 E.; T. 16 N., R. 21 E.; T. 17 N., R. 21 E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1990 Virginia City Grand Prix and Bureau lands within 500 feet of either side except at designated pit and spectator areas. This closure will be in effect from 7 a.m., May 12, 1990, until 6 p.m., May 13, 1990, during the official running of the event. In addition, the Catholic and Masonic historic cemeteries are closed to all vehicle traffic. These sites are located in: Mt. Diablo Meridian, Nevada T. 16 N., R. 21 E., section 6, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N1/2SE $\frac{1}{4}$.

2. Yokohama/Valley Off-Road Racing Association Yerington 400 Off-Road Race—Permit Number NV-03516-90-05. This event is located on roads and trails near Yerington, Nevada, in Douglas and Lyon Counties, within T. 13 N., R. 24 E.; T. 14 N., R. 24 E.; T. 15 N., R. 24 E.; T. 16 N., R. 24 E.; T. 13 N., R. 25 E.; T. 16 N., R. 25 E.; T. 16 N., R. 26 E.; and T. 17 N., R. 26 E. Bureau lands to be closed to the public include the existing roads and trails identified on the ground as the 1990 Yerington 400 Off-Road Race and Bureau lands within 500 feet of either side except at designated, marked spectator areas. Spectators shall remain in safe locations as directed by event officials or BLM personnel. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator and pit areas. These restrictions shall be in effect from 6 a.m. until 6 p.m., on May 27, 1990, during the official running of this event.

3. Carson Valley Rally—Permit Number NV-03516-90-06. This event is located near Carson City, Nevada, in Carson City and Douglas County, Nevada, within T. 13 N., R. 20 E.; T. 15 N., R. 20 E.; T. 13 N., R. 21 E.; T. 14 N., R. 21 E.; T. 15 N., R. 21 E. Included in this closure are the Brunswick Canyon and Sunrise Pass Roads. Between 4 p.m., Saturday, June 2, 1990, and 5 a.m., Sunday, June 3, 1990, the 18 miles of competitive race stage and Bureau lands within 500 feet of

either side, are closed to the public except at designated spectator areas. Areas designated for spectators are limited to the start and finish areas of the Brunswick and Sunrise competitive stages. All vehicles not participating in the event shall maintain a maximum speed of 10 MPH within designated spectator areas.

Authority for closure of public lands is found in 13 CFR part 8340, subpart 8341; 43 CFR Part 8360, subpart 8364.1, and 43 CFR part 8372. Persons who violate this notice are subject to arrest and upon conviction, may be fined not more than \$1000 and/or imprisoned for not more than 12 months.

Dated: April 30, 1990.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 90-10415 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-HC-M

[ID-030-00-5101-11 XDCK]

Intent To Prepare a Planning Amendment to the Pocatello Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment and an Environmental Impact Statement (EIS) and invitation for public participation. The BLM intends to prepare an EIS and consider whether to amend the Pocatello Resource Management Plan (RMP). The purpose of this planning activity is to evaluate a proposal to issue a right-of-way for a Hydroelectric project.

SUMMARY: The Idaho Falls District proposes to amend the district's Pocatello Resource Management Plan (RMP) in order to consider the merits of a hydroelectric project proposed for construction on a segment of the Bear River. The project would be located in an area known as Oneida Narrows, approximately 16 miles northeast of Preston, Idaho. The general issues to be addressed in the plan amendment include:

- (1) Potential impact to the designated Research Natural Area/Area of Critical Environmental Concern
- (2) Potential impacts to wildlife
- (3) Potential impacts to recreation
- (4) Potential impacts to endangered species

Disciplines represented during preparation of the plan would include engineering, wildlife, hydrology, riparian vegetation, wetlands, soils, recreation, minerals/geology and archaeology.

Interested publics are invited to participate in the plan amendment process through public meetings and

personal contact. The date, times and locations of the public meetings will be made known at a later date.

DATES: The issue identification process will end on June 19, 1990.

ADDRESSES: For further information contact: Bruce Bash or Tom Dyer, Bureau of Land Management, Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho, 83401.

Dated: April 24, 1990.

Gary Bliss,

Acting District Manager.

[FR Doc. 90-10386 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-GG-M

[AA-200-00-4322-02]

Vegetative Treatment Environmental Impact Statement (EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Hearing and Extension of Time to File Comments on Draft Vegetative Treatment EIS.

SUMMARY: Due to the amount of public interest in the subject draft EIS within the State of Utah, the comment period is hereby extended until May 22, 1990, when a formal hearing (details below) will be held to receive additional comments. Written and oral comments will be accepted.

Persons wishing to comment orally during the hearing are requested to also provide a written copy of their testimony for submission to the EIS team leader. Persons who are unable to attend the hearing may submit written comments to the address listed below by May 22, 1990. Comments submitted after the deadline will be considered in the EIS but may not receive a written response in that document.

A maximum of 5 minutes per person will be allowed to present oral testimony for the record. Interested individuals may sign up at the door or may sign up in advance by calling the BLM in Salt Lake City at (801) 539-4021.

DATE AND TIME OF HEARING: May 22, 1990, 6:30 p.m.

LOCATION: Salt Lake County Commission Chambers, 2001 South State Street, North Building, Salt Lake City, Utah.

POINT OF CONTACT: Written comments should be sent to: Jim Melton, Team Leader, Bureau of Land Management, 1701 East "E" Street, Casper, Wyoming 82601.

Dated: May 1, 1990.

Michael J. Penfold,

Assistant Director, Land and Renewable Resources.

[FR Doc. 90-10428 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-84-M

Meeting; Medford District Advisory Council

Notice is hereby given in accordance with Public Law 99-463 that a meeting of the Bureau of Land Management's Medford District Advisory Council will be held May 23, 1990.

The meeting will begin at 1 p.m. in the Oregon room of the Bureau of Land Management office at 3040 Biddle Road, Medford, Oregon. The agenda for the Advisory Council includes a request of the Council for advice on establishing a process to block up land ownership within the Medford District boundaries.

Persons interested in making oral statements during the council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business May 22, 1990. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: April 27, 1990.

James P. Clason,

Associate District Manager.

[FR Doc. 90-10391 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-33-M

[CA-050-4410-04]

Ukiah District Advisory Council Meeting.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting, Ukiah, California, District Advisory Council.

SUMMARY: Pursuant to Public Law 94-579 and 43 CFR 1780, the Ukiah District Advisory Council will meet in Middletown, California, June 6-7, 1990. Agenda items will include a tour of the Cache Creek Management Area, the Redding Resource Management Plan,

the Arcata Resource Management Plan, Ukiah District Wilderness Recommendations, and the Northern California Power Agency dam proposal at The Geysers. A complete agenda is available from the Ukiah BLM Office.

DATES: June 6, 10 a.m. to 5 p.m. and June 7, 8 a.m. to 3 p.m.

ADDRESSES: Wednesday, June 6, the council will tour the Cache Creek Management Area. Thursday, June 7, the Council will meet in the conference room at the Guenoc Winery in Middletown at 2100 Butts Canyon Road.

FOR FURTHER INFORMATION CONTACT: Barbara Taglio, Ukiah District office, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482, (707) 462-3873.

SUPPLEMENTARY INFORMATION: All meetings of the Ukiah District Advisory Council are open to the public. Individuals may submit oral or written comments for the Council's consideration. Opportunity for oral comments will be provided at 10 a.m. Thursday, June 7. Summary minutes of the meeting will be maintained by the Ukiah District Office and will be available for inspection and reproduction within 30 days of the meeting.

Dated: April 26, 1990.

Linda Hansen,

Acting District Manager.

[FR Doc. 90-10349 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-40-M

[OR-943-00-4212-22; GPO-216]

State Office Move; Oregon and Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This notice announces the move and new address of the Bureau of Land Management (BLM) Oregon State Office and the temporary closure of the Public room.

FOR FURTHER INFORMATION CONTACT: Catherine Crawford, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965; Telephone 503-231-6279.

SUPPLEMENTARY INFORMATION: Effective at the close of business on Thursday, June 21, 1990, the Public room of the BLM Oregon State Office will close for the purpose of initiating the move of the State Office to a new location. The address of the new office location will be 1300 NE. 44th Avenue, Portland, Oregon 97213. The mailing address for postal services will remain P.O. Box 2965, Portland, Oregon 97208-2965;

however, courier services must use the street address indicated above.

The Public room, which contains the official public land records and serialized case files of lands and minerals transactions for Oregon and Washington, will reopen and telephone service will resume at 8:30 a.m. on Monday, July 2, 1990. The new telephone number of the Public room will be (503) 280-7001.

In accordance with 43 CFR 1821.2-2, any documents that are required to be filed within the stated period of closure shall be deemed to be timely filed if received in the Public room no later than July 2, 1990. All other documents shall be considered simultaneously filed as of 8:30 a.m. on July 2, 1990, if received at or before such time.

For various reasons, the move of the entire State Office necessitates a phased move over several weeks. The phased move by organizational units will begin June 23, 1990, and the entire State Office will be in place on July 16, 1990, at the new location indicated above.

Dated: April 27, 1990.

D. Dean Bibbes,

State Director.

[FR Doc. 90-10385 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: May 19, 1990.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Bucks County Conservancy, 85 Old Dublin Pike, Doylestown, PA.

FOR FURTHER INFORMATION CONTACT: Deirdre Gibson, Division of Park and Resource Planning, Mid-Atlantic Regional Office, National Park Service, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100-692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural,

historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting involves organization of the Commission and orientation of the newly appointed Commissioners to the project and to their responsibilities.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 90-10342 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Colorado River Floodway Maps

AGENCY: Bureau of Reclamation, Interior.

ACTION: Availability of maps for public review and comment.

SUMMARY: The Colorado River floodway maps will be available for 90 days for public review and comment at several central locations. The maps have been prepared under the direction of the Colorado River Floodway Task Force and are to be incorporated as part of the Task Force's final report. The maps are also to be incorporated as components of the Federal Emergency Management Agency's (FEMA) flood insurance program for the lower Colorado River.

DATES: The maps will be available for public review and comment beginning on or before Tuesday, May 15, 1990. Comments should be received by Monday, June 18, 1990, in order to be incorporated into the Floodway Task Force's final report. Additional comments will continue to be accepted until Friday, August 17, 1990, for incorporation into the FEMA flood insurance program.

ADDRESSES: The maps will be available for review at the following locations:
Colorado River Board of California, 107 South Broadway, Room 8103, Los Angeles, CA 90012
Colorado River Commission of Nevada, 1515 E. Tropicana, Suite 400, Las Vegas, NV 89158

Arizona State Department of Water Resources, 15 South 15th Avenue, Phoenix, AZ 85007

Bureau of Reclamation, United States Department of the Interior, Boulder Highway at Park Street, P.O. Box 427, Boulder City, NV 89005

Office of City Planning for Bullhead City, 1375 Ramar Street, Bullhead City, AZ 86442

Office of County Supervisor, District 2, 5630 Highway 95, Fort Mojave, AZ 86427

City of Needles, City Offices, 1111 Bailey Avenue, Needles, CA 92363

Parker Area Chamber of Commerce, 1217 California Avenue, Parker, AZ 85344

Palo Verde Irrigation District, 180 West 14th Avenue, Blythe, CA 92226

Yuma County Flood Control, 2703 Avenue B, Yuma, AZ 85364

FOR FURTHER INFORMATION AND PROVIDING OF COMMENTS, CONTACT:

Mr. Robert Brose, Bureau of Reclamation, Boulder Highway at Park Street, P.O. Box 427, Boulder City, NV 89005; telephone: (702) 293-8520.

SUPPLEMENTARY INFORMATION: The Colorado River Floodway Protection Act, Public Law 99-450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a Task Force be established to assist in the development of the floodway boundary. Task Force meetings have been held on June 30, 1987; July 27, 1987; September 17, 1987; and October 25, 1988. The meetings have been dedicated to becoming familiar with the tasks to be accomplished, forming of committees, providing briefings on committee activities, and obtaining approval of methods and procedures. A fifth, and final, Task Force meeting is scheduled for Tuesday, May 29, 1990. A principal objective for this meeting is to receive final Task Force approval of the Task Force report and floodway maps that have resulted from the Task Force's efforts. The report and maps will then be forwarded to the Secretary of the Interior, thereby completing the work required by the Act.

Dated: April 27, 1990.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 90-10429 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-09-M

Colorado River Floodway Task Force

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The fifth, and final, Colorado River Floodway Task Force meeting is scheduled for Tuesday, May 29, 1990. A principal objective for this meeting is to receive final Task Force approval of the Task Force report and floodway maps that have resulted from the Task Force's efforts. The report and maps will then be forwarded to the Secretary of the Interior, thereby completing the work required by the Act.

DATES: An open meeting will be held on Tuesday, May 29, 1990 at 9 a.m.

ADDRESSES: The open meeting will be held at the following location: Holiday Inn, 245-London Bridge Road, Lake Havasu City, AZ 86403; telephone: (602) 855-4071.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Brose, Bureau of Reclamation, Boulder Highway at Park Street, P.O. Box 427, Boulder City, NV 89005; telephone: (702) 293-8520.

SUPPLEMENTARY INFORMATION: The Colorado River Floodway Protection Act, Public Law 99-450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a Task Force be established to assist in the development of the floodway boundary. Task Force meetings have been held on June 30, 1987; July 27, 1987; September 17, 1987; and October 25, 1988. The meetings have been dedicated to becoming familiar with the tasks to be accomplished, forming of committees, providing briefings on committee activities, and obtaining approval of methods and procedures. A draft of the proposed Task Force report, dated August 1, 1989, reflects the comments and suggested revisions by the members of the Task Force Steering Committee, the Chairperson of each of the Working Committees, and their Organizing Subcommittees. The draft report and preliminary floodway maps were presented to the Task Force subcommittees for review and comments on August 30, 1989. The final draft floodway maps will be mailed to the Task Force members and placed at several central sites for public review prior to the final Task Force meeting.

Dated: April 27, 1990.

Joe D. Hall,

Deputy Commission.

[FR Doc. 90-10430 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensation Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Pressure Vessel Service, Inc. d/b/a PVS Chemicals, Inc. 11001 Harper Avenue, Detroit, Michigan.

2. Wholly owned subsidiaries which will participate in the operations, and states of incorporations:

(i) Bay Chemical Company—Michigan;

(ii) Waste Acid Services, Inc.—

Michigan;

(iii) Chemical Transport Services, Inc.—

Michigan;

(iv) PVS Chemicals, Inc. (Illinois)—

Michigan;

(v) PVS Chemicals, Inc. (New York)—

Michigan;

(vi) PVS Chemicals, Inc. (Ohio)—

Michigan;

(vii) Fanchem, Ltd.—Ontario, Canada;

(viii) PVS Chemicals, Inc. (Michigan)—

Michigan.

Noreta R. McGee,

Secretary.

[FR Doc. 90-10399 Filed 5-3-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 6, 1990, a proposed Consent Decree in *United States v. Aero Corporation*, Civil Action No. 86-930-CIV-J-16 was lodged with the United States District Court for the Middle District of Florida. The Complaint, brought pursuant to the section 3008 (a), (g), and (h) of the Resource Conservation and Recovery Act ("RCRA") as amended, 42 U.S.C. 6928 (a), (g), and (h), sought penalties and injunctive relief for violations of section 3005 (e) (2) of RCRA, known as the Loss of Interim Status provision. The violations included the illegal discharge

of hazardous waste into an unlined surface impoundment on company property without a valid permit or interim status under the Act, failure to provide and maintain applicable sudden and non-sudden third party liability insurance, and illegally causing hazardous waste to be released into the environment.

In relief and compromise of the government's claims, the proposed Consent Decree imposes a permanent injunction against future violations of the Act by the defendant, closure of the company's surface impoundment, a schedule for corrective action as to hazardous waste released into the environment pursuant to a closure permit No. HF12-109292 issued by the State of Florida's Department of Environmental Regulation under the State's delegated RCRA authority, provisions for stipulated penalties for any violation of the injunction or schedule, and a civil penalty of \$68,000 for the cited violations.

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, P.O. Box 7811, Washington, DC 20530. Comments should refer to *United States v. Aero Corporation*, D.J. Ref. 90-7-1-346.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 501 Federal Building, 80 North Hughey Avenue, Orlando, Florida 32801 and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732 (R), Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy by mail, please enclose a check in the amount of \$2.00 (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. 90-10388 Filed 5-3-90; 8:45 am]

BILLING CODE 4410-01-M

Stipulation of Dismissal Pursuant to The Toxic Substances Control Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby

given that on April 18, 1990, a proposed stipulation of dismissal with prejudice in *United States v. Lipchik et al.*, Civil Action No. 87-326 ERIE, was lodged in the United States District Court for the Western District of Pennsylvania. The proposed stipulation of dismissal resolves a judicial action brought by the United States against defendants John M. Lipchik, individually, and John M. Lipchik Enterprises, Inc., for injunctive relief pursuant to section 17(1) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2616(1).

In this action filed on November 18, 1987, the United States sued the owner and/or operators of a demolition and salvage facility in Erie, Pennsylvania, for failing to take actions to dispose of three electrical transformers containing polychlorinated biphenyls ("PCBs"), within the meaning of TSCA and the implementing regulations at 40 CFR part 761. In December 1988, defendants removed the three PCB transformers from the facility, and an EPA inspection of the facility in May 1989, revealed no evidence of improper removal and disposal of the transformers. Because defendants have completely satisfied the United States' claims for relief in the complaint, it is appropriate to resolve the action through the stipulation of dismissal with prejudice.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed stipulation of dismissal. 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. Lipchik et al.*, D.J. Ref. 90-5-1-1-2871.

The proposed stipulation of dismissal may be examined at the office of the United States Attorney, 633 U.S. Post Office & Courthouse, 7th and Grant Streets, Pittsburgh, PA 15219, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the stipulation of dismissal may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed stipulation of dismissal 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 \$.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. 90-10387 Filed 5-3-90; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of

the nature of the particular submission they are interested in.

Each entry may contain the following information: The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/

ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration
Identification of Independent Contractors

1219-0043

Other: Upon application for an MSHA ID number

Businesses or other for profit; small businesses or organizations
932 respondents; 8 minutes per response; 121 total hours

Provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for the service of documents upon the contractor.

Employment and Training Administration

Statement from Courts or other Agencies; Statement from Institutions; Recommendation for Job Corps

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 655	State or local governments/nonprofit institutions	9,240	Occasionally	25 min.
ETA 655Ado.....	4,620do.....	30 min.
ETA 655Bdo.....	1,540	Occasionally.....	15 min.

6,545 total hours

These forms are an essential part of the screening and admissions process for Job Corps. It is essentially true due to the residential nature of the program, where behavioral problems can pose a danger to other enrollees. The information collected is critical in determining whether or not an applicant should be enrolled.

Employment Standards Administration

Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture
1215-0032; WH-200-MIS
Annually

Farms; businesses or other for-profit; non-profit institutions; small businesses or organizations
20,000 respondents; 4,200 total hours; 10 to 30 min. per response; 1 form

This information is needed to determine whether a retail or service or agricultural employer should be authorized to pay subminimum wages to full-time students under the provisions of sections 14(b) (1) and (2) of the FLSA. The Department used the information to approve such authority for the respondents.

Occupational Safety and Health Administration

Fatality/Catastrophe Reporting
1218-0007
On occasion

State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
2,724 respondents; 681 total burden hours; 15 average minutes per response.

All workplace fatalities and catastrophes must be reported so that OSHA can schedule an inspection to investigate. Such reporting is required by law. Reports may be made in any manner chosen by the employers; the simplest method is to use the telephone and call the Area Office. Although the employer is considered to be the best and most reliable source of such information, reports are sometimes found in newspapers, or other media which may result in an investigation

without waiting for the employer to notify the Area Office.

Signed at Washington, DC, this 1st day of May, 1990.

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[PR Doc. 90-10411 Filed 5-3-90; 8:45 am]

BILLING CODE 4510-43-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (40 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be

impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" are listed by Volume, State, and page number(s).

Volume II

Michigan, MI90-20 p. 544e, p. 544f

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the

Federal Register are in parentheses following the decisions being modified.

Volume I

District of Columbia, p. 79, pp. 60-87
DC90-1 (Jan. 5, 1990).

Florida:

FL90-1 (Jan. 5, 1990) p. 101, p. 102
FL90-2 (Jan. 5, 1990) p. 103, p. 104
FL90-9 (Jan. 5, 1990) p. 123, p. 124
FL90-12 (Jan. 5, 1990) p. 129, p. 130
FL90-13 (Jan. 5, 1990) p. 131, p. 132
FL90-15 (Jan. 5, 1990) p. 137, p. 138
FL90-17 (Jan. 5, 1990) p. 143, p. 145
FL90-18 (Jan. 5, 1990) p. 147, p. 148

New York:

NY90-12 (Jan. 5, 1990) p. 851, p. 852-859
NY90-15 (Jan. 5, 1990) p. 875, pp. 876, 878-879

Pennsylvania:

PA90-1 (Jan. 5, 1990) p. 909, pp. 910-911, 913
PA90-2 (Jan. 5, 1990) p. 921, pp. 922, 924
PA90-3 (Jan. 5, 1990) p. 935, p. 936
PA90-5 (Jan. 5, 1990) p. 951, pp. 952-953
PA90-7 (Jan. 5, 1990) p. 977, pp. 978-980
PA90-8 (Jan. 5, 1990) p. 987, pp. 988-991
PA90-9 (Jan. 5, 1990) p. 997, pp. 998-1000
PA90-10 (Jan. 5, 1990) p. 1005, p. 1006
PA90-12 (Jan. 5, 1990) p. 1013, p. 1014
PA90-16 (Jan. 5, 1990) p. 1033, p. 1034
PA90-17 (Jan. 5, 1990) p. 1035, pp. 1036-1037
PA90-19 (Jan. 5, 1990) p. 1049, pp. 1050-1052
PA90-20 (Jan. 5, 1990) p. 1055, p. 1056
PA90-21 (Jan. 5, 1990) p. 1063, p. 1064
PA90-22 (Jan. 5, 1990) p. 1067, pp. 1068, 1071-1072
PA90-23 (Jan. 5, 1990) p. 1079, p. 1080
PA90-24 (Jan. 5, 1990) p. 1085, pp. 1086-1087
PA90-26 (Jan. 5, 1990) p. 1093, p. 1094

Puerto Rico:

PR90-1 (Jan. 5, 1990) p. 1099, p. 1100
PR90-2 (Jan. 5, 1990) p. 1101, p. 1102
PR90-3 (Jan. 5, 1990) p. 1103, p. 1104

Volume II

Illinois:

IL90-11 (Jan. 5, 1990) p. 153, pp. 154-155
IL90-13 (Jan. 5, 1990) p. 173, pp. 175
Michigan, MI90-20 (Jan. 5, 1990), p. 544e, p. 544f

New Mexico, NM90-1 p. 747, p. 750 (Jan. 5, 1990).

Ohio:

OH90-2 (Jan. 5, 1990) p. 791, pp. 792-793
OH90-29 (Jan. 5, 1990) p. 873, pp. 875, 879, pp. 880, 895

Volume III

California:

CA90-1 (Jan. 5, 1990) p. 31, pp. 32-36, 38
CA90-2 (Jan. 5, 1990) p. 41, pp. 42-68

CA90-4 (Jan. 5, 1990)..... p. 71, pp. 72-76,
pp. 78-105

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 27th day of April 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-10228 Filed 5-3-90; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-19;
Exemption Application No. D-8151 et al.]

**Grant of Individual Exemptions;
Security National Bank and Trust
Company, Norman, OK, Employees
Profit Sharing Plan (the Plan), et al.**

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a

summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

**Security National Bank and Trust
Company, Norman, Oklahoma,
Employees Profit Sharing Plan (the
Plan), Located in Norman, Oklahoma**

[Prohibited Transaction Exemption 90-19;
Exemption Application No. D-8151]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase from the Plan of four promissory notes by the Federal Deposit Insurance Corporation, which is the successor in interest to the Security National Bank and Trust Company, Norman, Oklahoma, the sponsor of the Plan;

provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 28, 1990 at 55 FR 6697.

For Further Information Contact:
Ronald Willett of the Department (202) 523-8881. (This is not a toll-free number.)

**Oak Enterprises, Inc. Defined Benefit
Pension Plan (the Plan), Located in
Beverly Hills, California**

[Prohibited Transaction Exemption 90-20;
Exemption Application No. D-8155]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to Mrs. Susan Skerritt, a disqualified person with respect to the Plan, provided that the sale price for the Property is the greater of either the sum of \$72,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 5, 1990, at 55 FR 7793.

For Further Information Contact: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Individual Retirement Accounts of
Joseph E. Robbins and Selma Robbins
(together, the IRAs) Located in New
York, NY**

[Prohibited Transaction Exemption 90-21;
Exemption Application No. D-8272]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed purchase by the IRAs of certain 7% Senior Notes of Pope, Evans and Robbins, Inc. (the Notes) from Joseph E. Robbins, a disqualified person with respect to the IRAs, provided that (1) The sales price is no greater than the fair market value of the Notes on the date of sale, and (2) the fair market value of the Notes to be acquired by each IRA will not exceed 10% of the

total assets of such IRA on the date of sale.¹

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 5, 1990 at 55 FR 7794.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8833. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 1st day of May 1990.

Ivan Strasfeld,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 90-10448 Filed 05-03-90; 8:45 am]

BILLING CODE 4510-29-M

¹ Pursuant to the provisions contained in 29 CFR 2510.3-2(d), the IRAs are not subject to title I of the Act. However, the IRAs are subject to title II of the Act pursuant to section 4975 of the Code.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27958; File No. SR-DTC-90-04]

Self-Regulatory Organizations; Depository Trust Company; Order Approving a Proposed Rule Change That Establishes Procedures To Support the PORTAL System

April 27, 1990.

On March 1, 1990, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-90-04) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The rule change establishes a procedure enabling DTC participants who wish to settle transactions effected in the National Association of Securities Dealers, Inc.'s ("NASD") PORTAL trading system² to use DTC services to settle such transactions in compliance with certain PORTAL rules. The Commission published notice of this proposed rule change in the *Federal Register* on March 6, 1990.³ No public comments have been received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

A. In General

The proposed rule change is intended to permit DTC to act as a PORTAL clearing organization and PORTAL depository organization and to permit DTC's ID System to act as a PORTAL account instruction system, as those terms are used in the NASD's PORTAL rules.⁴ As discussed in Securities Exchange Act Release No. 27956,⁵ the PORTAL trading system establishes a new system for secondary trading of unregistered securities in transactions exempt from the registration and prospectus delivery requirements of the Securities Act of 1933 pursuant to rule 144A ("Rule 144A securities").⁶ The

¹ 15 U.S.C. § 78s(b)(1) (1989).

² PORTAL is the acronym for the "Private Offerings, Resales and Trading through Automated Linkages" system, a new trading system being developed by the NASD. The NASD has mandated use of certain DTC services in connection with trading in PORTAL. For a description of the PORTAL trading system, see Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49164.

³ Securities Exchange Act Release No. 27753 (March 2, 1990), 55 FR 7980.

⁴ See part I of the PORTAL Market rules for a definition of these terms.

⁵ (April 27, 1990), 55 FR _____ ("NASD Order").

⁶ See Securities Act Release No. 6882 (April 23, 1990), 55 FR _____.

PORTAL market also will provide facilities for primary placements of rule 144A securities. The PORTAL market is comprised of computer and communication facilities that, in addition to supporting primary placements and resale trading, will provide for the clearance and settlement of domestic and foreign debt and equity securities through designated PORTAL clearing and depository organizations. The NASD's PORTAL rules also provide controls for recordkeeping, multi-currency settlements, and for the exit of unregistered securities into the domestic United States retail market.

DTC's responsibilities as a PORTAL clearing organization, PORTAL depository organization, and PORTAL account instruction system generally consist of making available segregated DTC accounts for custody services for PORTAL securities that are eligible at DTC.⁷ This will permit PORTAL participants to maintain segregated PORTAL accounts to effect book-entry transfers to settle PORTAL transactions that are not scheduled for a five-day settlement period or that are between PORTAL broker-dealers only, and also allows PORTAL participants to maintain segregated ID System accounts to confirm, affirm, and settle PORTAL transactions within a five-day settlement period where the transactions involve PORTAL qualified investors who are not broker-dealers. DTC will provide these services to accommodate PORTAL participants' obligations under the NASD's PORTAL rules to transact PORTAL business in segregated PORTAL accounts.

B. DTC Procedures

Under the proposed rule change, DTC will permit any DTC participant that wishes to settle PORTAL transactions in PORTAL securities that are eligible for DTC services to instruct DTC to establish a separate Participant account number and associated ID System account number for PORTAL transactions. Participants who wish to use the ID System to settle their PORTAL transactions will be able to use these segregated accounts to do so. Custodian banks that act for an institution in the ID System also may apply for such account numbers. Participants also may use DTC's regular book-entry transfer services to settle PORTAL transactions and otherwise to manage their segregated PORTAL accounts.

⁷ DTC will act in its various PORTAL capacities for PORTAL securities that are U.S. securities eligible for rule 144A transactions.

In addition, this proposed rule change authorizes DTC to provide to the NASD information with respect to all transactions under such account numbers. Such authorization takes the form of a letter to DTC from applicants for PORTAL accounts. Participants must notify DTC of any rescission of such authorization in writing at least three business days before the rescission takes effect.

The information that DTC will make available to the NASD is contained in several reports. First, DTC will provide the NASD, on a daily basis, with two reports from the ID System—Confirmation Reports and Broker Trade Input Edits. The Confirmation Reports include information about all transactions entered in the ID System the previous day, the parties to each transaction, whether the transaction was done on an agency or principal basis by the PORTAL broker or dealer, the identification of the security, whether the transaction was a purchase or sale, the trade date and settlement date, quantity, price, net price, commission, and net amount. The Broker Trade Input Edits list for each PORTAL broker or dealer all confirmations as well as data input errors and error reason codes. Second, DTC also will provide daily reports of deliver orders (book-entry transfers) within the ID System as well as non-ID deliver orders. This information appears on the Participant's Daily Activity Statement. Third, DTC will provide the NASD, on a monthly basis, with its ID Quality Control Report, which lists eligible trade confirmations for each institution, and the affirmation, deliver, and receive rates.

Copies of the letters authorizing DTC to establish segregated PORTAL accounts will be sent to the NASD by the applicants. Applicants also promise in these letters to notify the NASD whenever they rescind DTC's authorization to provide the NASD with information with respect to the PORTAL accounts.⁸

II. DTC's Rationale for the Proposed Rule Change

DTC believes that the proposed rule change is consistent with the requirements of the Act, and especially section 17A of the Act, in that it promotes efficiencies in the clearance and settlement of securities transactions.

⁸ In a letter, dated February 27, 1990, between the NASD and DTC, DTC has agreed to notify the NASD as soon as practicable whenever a PORTAL participant or institution's agent rescinds such authorization.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act, and especially section 17A, and is therefore approving the proposed rule change. The proposed rule change is designed to facilitate the prompt and accurate clearance and settlement of securities transactions in the PORTAL system undertaken by DTC participants, and is consistent with the requirement to safeguard securities and funds in DTC's custody or control or for which it is responsible. For the reasons described in the NASD Order, the Commission has determined that the PORTAL trading system is consistent with the requirements of the Act and is consistent with the requirements of rule 144A under the Securities Act of 1933.

The DTC procedures that enable it to act as a PORTAL clearing organization, depository organization, and account instruction system are consistent with DTC's responsibilities under the Act. The custody and book-entry transfer services that DTC intends to make available for the segregated PORTAL accounts are the same services that DTC makes available generally. Likewise, DTC has not needed to revise its ID System procedures to accommodate the use of the ID System for PORTAL accounts. The Commission believes that making such services available for PORTAL participants, in segregated PORTAL accounts at DTC, will enhance the efficiency and safety of the settlement of securities transactions effected in the PORTAL market.

The Commission understands that DTC will not monitor compliance with the PORTAL rules for the NASD. The Commission is satisfied that DTC will provide the NASD with reports of activity in the segregated PORTAL accounts that will enable the NASD to monitor compliance with the PORTAL rules. As discussed in the NASD Order, the NASD's ability to monitor PORTAL activity is an important component of the PORTAL system.

Moreover, the Commission is satisfied with DTC's agreement to notify the NASD in the event a PORTAL participant rescinds its authorization to DTC to provide the NASD with reports of activity in the participant's PORTAL accounts. DTC's agreement to so notify the NASD directly is stated in a side letter from DTC to the NASD, and, in the Commission's view, is an appropriate arrangement to safeguard the NASD's ability to monitor compliance with the PORTAL system.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-90-04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-10403 Filed 5-3-90; 8:45 am]
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[Release No. 34-27959; File No. SR-ISCC-89-01; International Series 123]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving a Proposed Rule Change Concerning the PORTAL Trading System

April 27, 1990.

On December 11, 1989, the International Securities Clearing Corporation ("ISCC") filed a proposed rule change (File No. SR-ISCC-89-01) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The rule change concerns ISCC's rules and procedures for ISCC's participation as a clearing organization in the PORTAL trading system.² The Commission published notice of the proposal in the *Federal Register* on December 29, 1989.³ On January 17, 1990, ISCC filed an amendment to the proposed rule change concerning fees for PORTAL transaction processing.⁴ On February 23, 1990, ISCC

¹ 15 U.S.C. § 78e(b)(1) (1989).

² "PORTAL" is the acronym for the Private Offerings, Resale and Trading through Automated Linkages system, a new trading system that is being developed by the National Association of Securities Dealers, Inc. ("NASD"). The NASD has designated ISCC as a clearing organization for the PORTAL trading system under the PORTAL rules. For a description of the PORTAL trading system and rules, see Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49164.

³ Securities Exchange Act Release No. 27563 (December 21, 1989), 54 FR 53792.

⁴ Notice of the amendment was published in Securities Exchange Act Release No. 27707 (February 13, 1990), 55 FR 5936.

again amended the filing by making changes to two ISCC rules that would establish the authority of ISCC to require members and applicants for membership who want to access ISCC's link with the Centrale de Livraison de Valeurs Mobilieres, S.A. Luxembourg ("CEDEL"), for the settlement of PORTAL transactions to enter into and maintain certain consent forms.⁵ No public comments have been received on any of the filings. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

I. Description of the Proposed Rule Change

A. In General

The proposed rule change is intended to permit ISCC to act as a clearing organization⁶ for the PORTAL trading system. As discussed in the order approving the NASD's PORTAL related rule changes,⁷ the PORTAL trading system establishes a new system for secondary trading of unregistered securities in transactions exempt from the registration and prospectus delivery requirements of the Securities Act of 1933 pursuant to rule 144A ("Rule 144A securities").⁸ The PORTAL system also will provide facilities for private placement of rule 144A securities. The PORTAL market is comprised of computer and communication facilities that, in addition to supporting private placements and resale trading, provide for the clearance and settlement of domestic and foreign debt and equity securities through designated PORTAL clearing and depository organizations. The NASD's PORTAL rules also provide controls for recordkeeping, multi-currency settlements, and for the exit of unregistered securities into the domestic United States retail market.

ISCC's general responsibilities as a clearing organization for the PORTAL system are to act as a data communications vehicle for PORTAL participants, the NASD, CEDEL,⁹ which

is acting as a depository organization for the PORTAL trading system, and the Depository Trust Company ("DTC"),¹⁰ whose International Institutional Delivery System ("IID") is required to be used for PORTAL transactions.¹¹ The proposed rule change makes several changes to ISCC's rules and procedures to permit ISCC to act as a PORTAL clearing organization.

First, the proposed rule change amends ISCC rule 7 to permit ISCC to accept from self-regulatory organizations (such as the NASD) trade data on behalf of members for input to a foreign financial institution as defined in ISCC rule 1 (such as CEDEL) in connection with a link established by ISCC pursuant to ISCC rule 40, and to Qualified Securities Depositories as defined in ISCC rule 1 (such as DTC). Second, the proposed rule change establishes an addendum to ISCC's rules that describes procedures for ISCC members to use in connection with their PORTAL transactions, and procedures for ISCC to use in processing PORTAL trade data and in communicating with the NASD, CEDEL, and DTC about PORTAL transactions. Third, the proposed rule change amends the current link agreement between CEDEL and ISCC to permit CEDEL to transmit to ISCC data concerning PORTAL accounts at CEDEL.¹² Fourth, ISCC amended the filing to include a fee for PORTAL processing. ISCC intends to charge \$5.50 per instruction transmitted to a foreign financial institution, and \$3.00 per transaction submitted to DTC's IID system in connection with the PORTAL system. Finally, ISCC amended two of its rules—rule 2, which governs the requirements of applicants for membership, and rule 40, which governs the requirements of members who participate in links with foreign financial institutions—to authorize ISCC to require members to enter into and maintain such consents as ISCC may

require. This authority will enable ISCC to require participants using the PORTAL system to enter into consents that may be necessary to fulfill obligations imposed on ISCC and CEDEL by their regulators.¹³

B. ISCC Processing

Each business day, the NASD will transmit to ISCC via computer to computer ("CPU to CPU") link two masterfiles, one containing a PORTAL participant masterfile and one containing a PORTAL securities masterfile. ISCC will update these files prior to processing any new PORTAL transaction instructions received from the NASD. In the late afternoon or early evening of each business day, the NASD will transmit to ISCC the PORTAL transaction instructions for that business day. ISCC will validate the data, i.e., ensure that it is in the proper format, that it has the appropriate header and trailer records, and the total number of records. ISCC also will check the data against the security masterfile to ensure that all the instructions pertain to PORTAL securities.

Upon validation, ISCC will then reformat the transaction instructions into the appropriate data elements for CEDEL transactions and DTC's IID transactions. This reformatting uses the data input received from the PORTAL market and is supplemented by data in the participant masterfile (such as the identity of the institution's global custodian IID account information, the broker/dealer's symbol or name and location, and the like). Instructions that are rejected in the editing process are noted on contract sheets that are distributed in the morning after trade date. PORTAL participants will be able to enter corrected information at that time.

In the evening of trade date, ISCC will prepare the file for transmission to CEDEL via the General Electric Information Services Company's ("GEISCO") telecommunications network.¹⁴ Upon successful

⁵ Notice of the amendment was published in Securities Exchange Act Release No. 27823 (March 20, 1990), 55 FR 11281 (March 27, 1990).

⁶ Section 7 of part I of the PORTAL market rules defines "clearing organization" as "a clearing organization that is part of the PORTAL clearing system and is designated by the Association to perform clearance and settlement functions with respect to PORTAL securities."

⁷ Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR _____ ("NASD Order").

⁸ See Securities Act Release No. 6882 (April 23, 1990), 55 FR _____.

⁹ CEDEL is a clearing organization located in Luxembourg that offers matching and settlement services for Eurobond transactions as well as other types of transactions including those involving international equities.

¹⁰ DTC is a registered clearing agency and is the largest securities depository in the United States.

¹¹ DTC's IID system has been designated by the NASD as a PORTAL account instruction system. See Securities Exchange Act Release No. 27470, note 2, *supra*.

¹² ISCC and CEDEL operate a data communication linkage, which was the subject of a no-action letter issued by the Commission's Division of Market Regulation ("Division") to ISCC. See letter from Jonathan Kallman, Assistant Director, Division, to Karen L. Saperstein, Associate General Counsel, ISCC (September 13, 1988). That no-action letter specifically excluded PORTAL transactions from the linkage. This proposed rule change amends the agreement between ISCC and CEDEL upon which the no-action letter was based, and the Commission's approval of the proposed rule change thereby encompasses approval of processing PORTAL transactions through the data communications link.

¹³ The Commission and the Institut Monetaire Luxembourgeois ("IML") have agreed to sign a Memorandum of Understanding ("MOU") in connection with the start-up of the PORTAL system. This MOU concerns the sharing of information by ISCC and CEDEL about material adverse changes that occur in PORTAL accounts. Indeed, this Order is conditioned upon ISCC's sharing certain information with CEDEL regarding PORTAL accounts. See discussion, *infra*.

¹⁴ The current data communications linkage between ISCC and CEDEL uses ISCC software, called Global Compass, to arrange data into the proper CEDEL format in connection with the transmission of instructions about non-PORTAL transactions. PORTAL participants will be able to

Continued

transmission that evening, ISCC will receive confirmation of the total number of records sent through GEISCO. GEISCO will review and edit the data for valid elements only. If any transactions have been duplicated during the input process, ISCC, CEDEL and GEISCO will be unable to detect this. Any duplicated item will remain as an open item on the participant's CEDEL report.¹⁵

In the early morning hours of the day after trade date ("T+1"), ISCC will receive the GEISCO/CEDEL items rejected during the edit process. ISCC will post the rejected items to the participants' contract sheets, and ISCC will notify the NASD of the rejected items by forwarding the file that same morning.

In the afternoon of T+1, ISCC will receive via GEISCO the reports resulting from CEDEL's processing for that day, including participants' reports and reports from agent banks' PORTAL accounts. PORTAL participants will be able immediately to download their CEDEL reports via the Global Compass system, and will be able to print these reports locally. ISCC will transmit to the NASD via CPU to CPU link a machine readable copy of the file containing the participants' and agent banks' CEDEL reports at about 4 p.m. ET daily.

With respect to DTC's IID processing, in the morning on trade date, ISCC will prepare the DTC IID instructions file, and send it to DTC via CPU to CPU link. Information in the PORTAL participant and PORTAL securities masterfiles also will be used to supplement the IID transaction instructions.¹⁶ ISCC expects to receive any rejects from DTC within 3 hours of transmission. ISCC will post the rejected items to the participants' contract sheets and will pass the data to the NASD in a machine readable file.

ISCC will prepare contract sheets posting all instructions received from participants on trade date. Contract sheets also will list items rejected in the ISCC, GEISCO, and CEDEL edit

use Global Compass to notify CEDEL of cash instructions in their PORTAL accounts. ISCC will combine the transmission of all Global Compass data, both PORTAL data and non-PORTAL data, in the submission to CEDEL. Any PORTAL submission will be screened, however, against the PORTAL security masterfile before transmission.

¹⁵ It is the participant's responsibility to identify these items and cancel them. CEDEL will maintain these items on the records for about 45 business days, and then will notify the participant that the items will be automatically cancelled unless CEDEL is otherwise instructed. CEDEL will cancel the items if it receives no further instructions from the participant within 15 days.

¹⁶ For example, ISCC may extract from the masterfiles such information as the DTC IID account numbers, agent bank's name and location, and security description.

processes, and, to the extent possible, will list the reasons for the rejection. ISCC will forward the contract sheets to participants between 5 and 6 a.m. ET on T+1 via ISCC's Global Compass system. PORTAL participants can download their contract files from ISCC's mainframe and print the contracts locally. ISCC will forward a machine readable copy of this file to the NASD at the same time.

ISCC will retain copies of all input from the Global Compass system, all direct input from the PORTAL marketplace, and copies of the reports received from CEDEL. The copies will be retained in microfiche form.

II. ISCC's Rationale for the Proposed Rule Change

In its filing, ISCC stated its belief that the proposed rule change facilitates the prompt and accurate clearance and settlement of PORTAL securities transactions and is, therefore, consistent with the requirements of the Act, especially section 17A, and the rules and regulations thereunder applicable to ISCC.

III. Discussion

The Commission believes the proposed rule change is consistent with the Act, and especially section 17A, and is therefore approving the proposed rule change. The proposed rule change is designed to facilitate the prompt and accurate clearance and settlement of securities transactions in the PORTAL system undertaken by ISCC members, and is consistent with the requirement to safeguard securities and funds in ISCC's custody or control or for which it is responsible. For the reasons described in the NASD Order, the Commission has determined that the PORTAL trading system is consistent with the requirements of the Act and is consistent with the requirements of Rule 144A under the Securities Act of 1933.

ISCC's participation as a clearing organization in the PORTAL system is consistent with ISCC's responsibilities under the Act. As a registered clearing agency, ISCC already maintains a communications linkage with CEDEL under the terms of a noaction letter issued by the Division.¹⁷ ISCC has operated that communication system for more than one year and has demonstrated its ability to process member instructions efficiently and expeditiously. By the terms of this proposed rule change, ISCC seeks to amend that communications linkage to include transactions in the PORTAL

trading system, and has filed with the Commission the appropriate changes to its rules, procedures, and agreement with CEDEL.

ISCC seeks to act as the communications link among PORTAL participants, the NASD, DTC's account instruction system, and CEDEL, a PORTAL depository organization. The Commission believes that ISCC, acting in this capacity, will perform its duties to enable PORTAL settlements to take place promptly and accurately.¹⁸ For example, ISCC will ensure that only trade data from appropriate PORTAL participants and concerning appropriate PORTAL securities is given to the depository. ISCC also will perform other verification and edit checks to ensure that information transmitted for settlement will be accepted by the depository organization, CEDEL, and the account instruction system, DTC's IID system. ISCC will notify participants of any rejected data on ISCC contract sheets available in the early morning on T+1, so that participants may resubmit data that day. ISCC also will provide the NASD with copies of all CEDEL reports pertaining to PORTAL accounts. The NASD will use these reports to monitor and enforce compliance with the PORTAL rules.

Moreover, ISCC's activities, as described above, will provide a mechanism by which the Commission may exercise continuing monitoring of the procedures and regulations at the depository organization. ISCC will provide the Commission with copies of all information it receives from the depository organization about changes to the depository's systems, procedures, status, or participants. In addition, ISCC will continue to maintain information about transactions that flow through its data communications facility, thereby providing the Commission with a source of information about transactions settling outside the U.S. that involve U.S. brokers and dealers.

The Commission believes that ISCC and CEDEL should share certain information about the financial or operational status of PORTAL participants that are joint members of ISCC and CEDEL. As a condition to approval of this proposed rule change, therefore, the Commission is requiring that ISCC share certain information with CEDEL regarding material adverse changes in the PORTAL accounts which are cleared by ISCC for its members

¹⁸ ISCC has represented that its automated systems and related controls are adequate to support anticipated routine and peak PORTAL trading volumes.

¹⁷ See note 12, *supra*.

who are also members of CEDEL. "Material adverse changes" will be limited to ISCC's knowledge of a default in settlement in a PORTAL account by an ISCC member for credit reasons, a liquidation of collateral in a PORTAL account for which ISCC is acting as a clearing organization, or a limitation imposed by ISCC on any credit line of a member of ISCC relating to a PORTAL account for which ISCC is acting as a clearing organization or in the use of ISCC's services with respect to such an account.¹⁹

ISCC believes that it will be necessary to obtain participant consent to permit ISCC and CEDEL to share information concerning joint members and their PORTAL accounts. Accordingly, the proposed rule change, as amended, provides ISCC the authority to require such consents.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-ISC-89-01) be, and it hereby is, approved, subject to the condition noted above.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-10404 Filed 05-03-90; 8:45 am]

BILLING CODE 9010-01-M

[Release No. 34-27956; File No. SR-NASD-88-23]

Self Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments to Proposed Rule Change of the National Association of Securities Dealers, Inc., Relating to the Operation of the PORTAL Market

I. Introduction

On June 17, 1988, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange

Commission ("SEC" or "Commission") a proposed rule change (File No. SR-NASD-88-23) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ to establish a new Schedule I to the NASD By-Laws ("PORTAL Rules").² The proposed PORTAL Rules establish a new trading system for secondary trading of unregistered securities in transactions exempt from the registration and prospectus delivery requirements of the Securities Act of 1933 ("Securities Act"), pursuant to Rule 144A ("Rule 144A securities").³ The PORTAL system will also provide facilities for primary placements of Rule 144A securities. The PORTAL Market is comprised of computer and communication facilities⁴ that, in addition to supporting primary placements and resale trading, will provide for the clearance and settlement of domestic and foreign debt and equity securities through designated PORTAL clearing and depository organizations. The NASD's proposed PORTAL Rules also provide controls for record-keeping, multi-currency settlements and for the exit of unregistered securities into the domestic United States retail market.⁵

¹ 15 U.S.C. 78(b)(1) (1982).

² See Securities Exchange Act Release No. 27470 (November 24, 1989), 54 FR 49164. That release describes Amendment No. 1 to the proposed rule change, which was submitted as a substitute to the NASD's original submission and describes Amendment No. 2 as well. Amendment No. 3 was a technical amendment and Amendments 4 and 5 were published in Securities Exchange Act Release No. 27692 (February 8, 1990), 55 FR 4925. Amendment No. 6, which designated the Depository Trust Company ("DTC") as the PORTAL depository for domestic securities and described how settlement at DTC would occur, was replaced by Amendment No. 7. The Commission is publishing notice of and granting accelerated approval to amendment No. 7 in this Release. Subsequently, the NASD filed Amendments No. 8, 9, 10 and 11, which were technical amendments not requiring notice and comment. Amendment No. 11 was filed to clarify certain issues raised at the Commission's April 19, 1990 open meeting.

The Commission received one comment letter on the proposed rule change. Letter to Jonathan G. Katz, Secretary, SEC, from Rachel F. Robbins, Managing Director, JP Morgan Securities, Inc. ("JPMS"), dated December 22, 1989.

³ See Securities Act Release No. 6862, (April 23, 1990).

⁴ PORTAL participants will have the option of accessing PORTAL through a modem connected to their personal computers or through NASDAQ workstations. NASDAQ workstations will have the capability of displaying PORTAL by itself or in a window on the screen. Workstations were designed to permit a user to divide the screen into quadrants, allowing the user to display four different types of market information simultaneously.

⁵ The NASD will not impose a fee with respect to transactions in the PORTAL Market for the first six months of the PORTAL Market's operation. When the NASD has developed a fee structure, it will be filed with the Commission for review pursuant to section 19(b) of the Exchange Act.

In conjunction with the NASD's request that the Commission approve the PORTAL system, the NASD also requested that the Commission issue a variety of interpretative, exemptive and no-action positions. First, the NASD requested that the Commission exempt quotations entered into PORTAL from the requirements of Rule 15c2-11 under the Exchange Act. Second, the NASD requested that PORTAL qualified investors in domestic and foreign equity securities not be counted as recordholders for purposes of determining whether registration of those securities is required under section 12(g) of the Exchange Act. Third, the NASD requested that the Commission take the position that foreign private issuers with a class of equity securities trading on PORTAL could claim the exemption provided by Rule 12g3-2(b) from the registration requirements of section 12(g).

Finally, the NASD also submitted an application under section 11A(b) and Rule 11Ab2-1 thereunder for the registration of its subsidiary, Market Services, Inc. ("MSI"), as an exclusive securities information processor for the PORTAL Market and requested a temporary exemption of 90 days to cover the period from the date of the approval of the PORTAL Rules to the completion of the Commission's review of the registration application.⁶

II. Description

A. System Operation

The normal PORTAL Market hours of operation will be from 9:30 a.m. to 4:00 p.m. Eastern Time. The PORTAL Market will accept quotations that are one- or two-sided, firm or indicative.⁷ Settlement day for secondary market transactions in the PORTAL Market will be five business days after the date of execution of the transaction, except as otherwise agreed between the parties to the transaction. Transactions can settle in any currency accepted by a designated PORTAL depository organization.⁸

The NASD stated that it has considered the effect of the PORTAL Market on the capacity and vulnerability of the NASDAQ System. The NASD represented that it believes

⁶ Section 11A(b) of the Exchange Act requires exclusive securities information processors to register with the Commission.

⁷ The PORTAL Market requires neither firm quotations nor market-making.

⁸ Initially, there will be two depository organizations, DTC and Centrale de Livraison de Valeurs Mobilières, S.A. Luxembourg ("CEDEL"). DTC accepts U.S. dollars, CEDEL accepts 27 currencies, including U.S. dollars.

¹⁹ The MOU between the Commission and the IML contains a mirror requirement that CEDEL make similar information available to ISCC. While the Commission is requiring only that ISCC share the specified PORTAL account information covered by this MOU, we fully expect that ISCC will inform CEDEL of material adverse changes in any accounts of joint ISCC/CEDEL members that ISCC learns about in the normal course of its business.

that the system has adequate capacity to withstand foreseeable peak volumes and is reasonably designed to guard against physical threats, including internal and external hackers and viruses.⁹ In addition, the NASD stated that the PORTAL Market will operate independently of the NASDAQ System and will utilize different hardware and software. The operation and system capacity of the NASDAQ System, therefore, cannot be affected in any manner by the operation of the PORTAL Market. The NASD also has considered the security issues surrounding the ability of PORTAL participants to access the PORTAL Market through dial-up from a personal computer and submitted to the Commission a description of the necessary procedures to access the system.¹⁰ The NASD stated that it has taken the necessary precautions to ensure that the PORTAL Market will not be accessed by unauthorized persons.

B. PORTAL Securities and Participants

1. PORTAL Securities

The basic requirement for PORTAL securities is that they be eligible to be 144A securities.¹¹ The PORTAL Rules further provide that to be a PORTAL security, a Rule 144A security must be designated by the Association for inclusion in the PORTAL Market and that it has been or will be deposited in the PORTAL depository system no later than the date specified by the PORTAL depository organization.¹² Any

⁹ See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Christine A. Sakach, Branch Chief, Division of Market Regulation, dated April 3, 1990.

¹⁰ A full description of the capacity assessment and security procedures was included in Amendment No. 4. See Securities Exchange Act Release No. 27692 (February 8, 1990), 55 FR 4925; and subsequent letters.

¹¹ For a transaction to be covered by Rule 144A the securities offered or sold: (1) must not be of the same class as securities listed on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system; (2) must not be of an open-end investment company, unit investment trust or face-amount certificate company that is or is required to be registered under section 8 of the Investment Company Act of 1940. See Rule 144A(d)(3). The fact that a class of securities is traded in PORTAL will not cause that class to be ineligible because of the restrictions on fungible securities under 144A. See note 79, *infra*.

In addition, for securities of an issuer not subject to section 13 or 15(d) of the Exchange Act, not exempt from reporting pursuant to Rule 12g3-2(b) under the Exchange Act, and not a foreign government, the holder and a prospective purchaser designated by the holder must have the right to obtain from the issuer, upon request of the holder, and must have received at or prior to the time of sale, certain basic issuer information. See Rule 144A(d)(4).

¹² PORTAL securities do not include securities of the same class or series as the PORTAL securities

PORTAL dealer, PORTAL broker or PORTAL qualified investor (together referred to as "PORTAL participants") may submit an application for designation of a PORTAL security.¹³ The application may be made with or without the concurrence of the issuer, as the PORTAL Market is intended to facilitate the trading of unregistered securities regardless of whether the issuer specifically has authorized the security to be included in the PORTAL Market.¹⁴ A security must be in negotiable form and not subject to any restriction, condition or requirement that would impose an unreasonable burden on any PORTAL participant. The PORTAL Rules provide the NASD with the authority to require satisfaction of additional criteria or requirements it may determine to impose,¹⁵ and to make exceptions to certain of these criteria as it deems appropriate.¹⁶

The Rules provide the Association with authority to suspend or terminate designation of a PORTAL security if the security is not in compliance with the requirements of the PORTAL Rules,¹⁷ or if failure to withdraw designation of such securities would for any reason be detrimental to the interests of PORTAL participants or the Association.¹⁸ A

that are not currently on deposit in the PORTAL depository system and that will not be so deposited as a result of a purchase transaction by a PORTAL participant.

¹³ The applicant will be required to demonstrate to the Association's satisfaction that the security meets the qualification requirements of the PORTAL Rules.

¹⁴ Eligibility of a security under Rule 144A is determined as of the time of issuance of the security.

¹⁵ The NASD stated that it reserved this authority to provide it with flexibility to respond to unanticipated situations surrounding the qualification of a particular security. Such additional criteria usually will be additional documentation supporting the application in order to satisfy the NASD that the security meets the qualification requirements. The NASD stated that it will impose such additional criteria or requirements as necessary to ensure compliance with the PORTAL Rules and to protect investors and the public interest.

¹⁶ No exceptions may be granted from the 144A eligibility requirement or from the deposit requirements. Other exceptions from PORTAL security designation requirements will be granted on a case-by-case basis under circumstances that would be consistent with the regulatory rationale underlying the PORTAL Rules and Rule 144A.

¹⁷ The NASD also has the authority to suspend or terminate a security's designation if the application, or other document submitted in support of the application, contains an untrue statement of a material fact or omits to state a material fact necessary to make the statement not misleading.

¹⁸ The NASD stated that this is necessary because the PORTAL Market will be an entirely new trading system. There has been no prior experience of any regulatory authority with a marketplace composed of unregistered foreign and domestic securities. The NASD believes it must be able to respond to unusual and novel situations

suspended or terminated PORTAL security shall remain subject to the PORTAL Rules until sold in a qualified exit transaction¹⁹ or otherwise dealt with in accordance with the terms of notice by the Association of the suspension or termination. PORTAL participants are prohibited from purchasing the suspended or terminated securities through the PORTAL Market.

2. PORTAL Participants

The PORTAL Rules prohibit an investor from participating in a transaction in a PORTAL security in the PORTAL Market unless the NASD has approved its registration as a PORTAL qualified investor. An investor must apply in the form required by the Association and must demonstrate to the satisfaction of the Association that it meets the definition in Rule 144A of a "qualified institutional buyer." Rule 144A generally provides that a qualified institutional buyer must in the aggregate own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the entity.²⁰

NASD members must meet the requirements of the proposed PORTAL Rules applicable to "PORTAL dealers" and "PORTAL brokers" to participate in the PORTAL Market.²¹ A PORTAL

related to a PORTAL-designated security where the Association determines that continued inclusion of the security would be detrimental to the public interest or the interests of PORTAL participants or the Association.

¹⁹ The PORTAL Rules provide limited means for the withdrawal of PORTAL securities from the PORTAL Market. These mechanisms are referred to in the Rules as "qualified exit transactions." The PORTAL Rules permit the sale of PORTAL securities to an account outside the PORTAL Market in a transaction registered under section 5 of the Securities Act or not subject to such registration by reason of compliance with Securities Act Release No. 4708, Regulation S, Rule 144, or Rule 145; or with Rule 144A, as determined by the Association, upon submission of an opinion of counsel prior to the transaction. Exit transactions also are permitted where the issuer is repurchasing its securities and where the seller has demonstrated to the NASD on a pre-exit basis that the transaction is exempt from Commission registration and the purchaser will acquire securities that can be freely resold without registration under the Securities Act.

²⁰ A dealer registered under section 15 of the Exchange Act, acting for its own account, must in the aggregate own and invest on a discretionary basis at least \$10 million of securities of non-affiliated issuers that do not constitute part or all of an unsold allotment or subscription by the broker-dealer. A bank, savings and loan association or any foreign bank or a savings and loan association, acting for its own account, in the aggregate must own and invest on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it, and must have an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements.

²¹ PORTAL dealers may execute transactions on a principal or agency basis. PORTAL brokers are

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broker is prohibited from engaging in principal transactions in the PORTAL Market and from underwriting an offering of securities on a "firm-commitment basis."²² In the event that the NASD determines that a PORTAL broker has conducted any PORTAL Market transactions on a principal basis, the member will be subject to suspension or termination as a PORTAL broker and such other disciplinary action as the NASD deems necessary under the circumstances.²³ A PORTAL broker, however, is permitted to underwrite and participate in offerings of securities underwritten on a "best efforts" basis because the broker would not bear any capital risk for the sale of the securities.

PORTAL dealers and brokers must be members of the NASD, be qualified to do business as general securities firms, be direct or indirect participants in a PORTAL clearing organization,²⁴ PORTAL depository²⁵ and, as necessary, a PORTAL account instruction system.²⁶

C. System Controls

All PORTAL participants must be members of a PORTAL depository organization and must direct the PORTAL depository organization to segregate its PORTAL accounts for PORTAL securities from all other

limited to transactions executed on an agency basis. Thus, they must meet all of the registration requirements applicable to PORTAL dealers, except the requirements that the participant be eligible to purchase securities under Rule 144A.

²² The PORTAL Rules differ from Rule 144A in that 144A will permit brokers to engage in riskless principal transactions, as defined in the rule.

²³ A disciplinary complaint potentially could include actions for violation of the PORTAL Rules and the sale of restricted securities without an applicable exemption from Section 5 of the Securities Act.

²⁴ The PORTAL clearing organizations are DTC and the International Securities Clearing Corporation ("ISCC"), which are registered under section 17A of the Exchange Act. See Securities Exchange Act Release Nos. 27958 and 27959, respectively.

²⁵ There are currently two PORTAL depositories: DTC for U.S. securities and CEDEL for foreign securities. Because the Commission based its designation of CEDEL as a PORTAL depository, in part, on representations made by the NASD about CEDEL operating procedures, the NASD will be required to notify the Commission should CEDEL make any material changes to its operating procedures. Such changes could potentially preclude CEDEL from maintaining its status as a PORTAL depository organization.

²⁶ The PORTAL account instruction systems currently designated by the NASD are the International Delivery System ("IDS") (for transactions in foreign securities) and the Institutional Delivery System ("IDS") (for transactions in domestic securities), which are owned and operated by DTC. A PORTAL qualified investor is also required to be a participant in a PORTAL account instruction system.

accounts at the depository²⁷ and to release information regarding PORTAL account activity²⁸ to the Association or its designee.²⁹ To facilitate this exchange of information, the Commission and the Institut Monetaire Luxembourgeois ("IML")³⁰ have agreed to enter into a Memorandum of Understanding ("MOU") in which the IML expressed its intention to require CEDEL to transmit to ISCC information about "Material adverse changes" regarding PORTAL accounts of joint CEDEL and ISCC members.³¹ Similarly, the Commission expressed its intention to require that the ISCC transmit information about "material adverse changes" to CEDEL.

The NASD has developed model advice and confirmation letters between the applicant-PORTAL participants and their agents, and DTC, CEDEL and ISCC that direct and authorize the transmission of account activity regarding PORTAL accounts to the NASD and, in the case of CEDEL-eligible securities, for ISCC to accept data for transmission to CEDEL regarding the account (*i.e.*, from IID or PORTAL).³² The model confirmation

²⁷ If the PORTAL qualified investor relies on an agent, it must maintain an account at its agent that provides it access to the services of a PORTAL depository organization that is segregated from all other accounts it may have at the agent.

²⁸ The language "PORTAL account activity" means any movement of securities in and out of the participant's account, including free transfers, purchases and sales.

²⁹ See letters from Frank J. Wilson, Executive Vice President, NASD, to Karen L. Saperstein, Associate General Counsel, ISCC, dated January 9, 1990, and to Richard B. Nesson, general Counsel and Senior Vice President, DTC, dated February 27, 1990.

³⁰ Since 1982, CEDEL has been supervised by the IML, which also supervises Luxembourg's banks.

³¹ "Material adverse changes" will be limited to CEDEL's or ISCC's knowledge of a default in settlement in a PORTAL account by a CEDEL or ISCC member for credit reasons, a liquidation of collateral in a PORTAL account maintained by CEDEL or for which ISCC is acting as a clearing organization, or a limitation imposed by CEDEL on any credit line of a member relating to a PORTAL account maintained by CEDEL or for which ISCC is acting as a clearing organization or in the use of CEDEL's or ISCC's services with respect to such an account.

³² The rules require PORTAL applicants to submit copies of these letters to the NASD as part of the application.

The model letter from the investor to its agent bank instructs the agent bank to: (1) Confirm that the agent bank has opened an account at CEDEL specifically identified as a PORTAL account; (2) include the investor's transactions in PORTAL securities in an account established at the agent bank for transactions in PORTAL securities; and (3) direct and authorize CEDEL to release to the NASD through ISCC-PORTAL via the ISCC-CEDEL communication link all information in respect of the investor's position maintained in the agent bank's CEDEL account. The model letter from the agent bank to the investor confirms it has agreed to comply with the foregoing instructions.

letters from the PORTAL depositories state that they will transmit all reports each business day in connection with the account to the NASD. In the case of CEDEL, the reports will be transmitted to PORTAL through ISCC under the data communication agreement CEDEL maintains with ISCC,³³ and will provide the NASD the information required by the MOU.

Each PORTAL broker and dealer must demonstrate to the satisfaction of the Association that it has supervisory procedures reasonably designed to achieve compliance with the restrictions on qualified exit transactions³⁴ and qualified exit transfers.³⁵ A PORTAL dealer or broker is prohibited from selling or transferring a PORTAL security to an account outside the PORTAL Market unless (1) the transaction is in compliance with the restrictions on qualified exit transactions or on qualified exit transfers, (2) information demonstrating such compliance is preserved pursuant to Rule 17a-4 under the Exchange Act,³⁶ and (3) a PORTAL exit report is filed with NASD Market Surveillance within one business day of the execution of the sale or transfer.

The PORTAL Rules provide the NASD the authority to suspend or terminate the registration of a PORTAL dealer or broker if, among other things, a member: (1) Sells securities in a manner not in compliance with Rule 144A or with any rule or regulation of the NASD or the Commission; (2) fails to maintain membership in the PORTAL depository, clearing, and account instruction systems and, with respect to the PORTAL depository system, fails to maintain PORTAL securities in a PORTAL segregated account;³⁷ or (3) fails to release information regarding the activities in its PORTAL account to the NASD or to ISCC.³⁸

³³ CEDEL will advise ISCC and ISCC will advise the NASD of any withdrawal of a PORTAL dealer or broker from its PORTAL account. DTC has agreed to inform the NASD directly of any similar account changes.

³⁴ See note 19, *supra*.

³⁵ A qualified exit transfer is: (1) a return of borrowed securities to a non-PORTAL account; or (2) a transfer by a PORTAL participant from its PORTAL account to an account of the PORTAL participant outside the PORTAL Market.

³⁶ 17 CFR 240.17a-4 (1989).

³⁷ Under the model letters described *supra*, the PORTAL depository will advise the NASD of any withdrawal of a PORTAL dealer or PORTAL broker from membership in DTC, CEDEL or ISCC. CEDEL will advise the NASD through ISCC.

³⁸ Instructions by a PORTAL dealer or PORTAL broker to a PORTAL depository or clearing organization to release information to the NASD are effective until rescinded by the PORTAL dealer or

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The NASD does not have regulatory authority to discipline PORTAL qualified investors that are not also members of the NASD. It can enforce, however, the PORTAL Rules through its ability to approve, deny, suspend or terminate the registration of an investor as a PORTAL qualified investor.

The NASD may suspend or terminate the registration of a PORTAL qualified investor if, among other things, the investor: (1) sells or transfers a PORTAL security to an account outside the PORTAL Market in a manner that does not comply with the restrictions on qualified exit transactions or qualified exit transfers; (2) submits an application or document containing an untrue statement of material fact or which omits to state a material fact necessary to make the statements in the application or document not misleading; (3) fails to comply with any requirements of the PORTAL Rules³⁹ or to file any documents or pay any fee that may be required by the Association; or (4) rescinds its authorization to its PORTAL depository organization to release information in respect of its or its agent's PORTAL account activity to the NASD or ISCC.⁴⁰ Notwithstanding the suspension or termination of the registration of a PORTAL qualified investor, the investor is required to remain subject to the PORTAL Rules with respect to the disposition of any PORTAL securities in its accounts and is required to engage only in transactions in those securities in accordance with the NASD's terms of notice of the suspension or terminations.⁴¹

PORTAL broker, CEDEL will provide advice to ISCC or a rescission of instructions to release PORTAL account information. ISCC will inform the NASD of any advice from CEDEL that it will be denied access to PORTAL account information at CEDEL and of any instructions received from a PORTAL dealer or PORTAL broker rescinding the NASD's access to PORTAL account information at ISCC.

³⁹ The PORTAL Rules require that eligibility pursuant to Rule 144A be demonstrated annually.

⁴⁰ In addition, the NASD stated in its filing with the Commission that it will transmit information concerning the violation to the Commission's Division of Enforcement if the NASD has reason to believe that there is a substantial possibility that the investor may have violated any rule or regulation of the Commission.

⁴¹ Although the NASD has retained the discretion to dictate the manner in which PORTAL securities are disposed, there are, generally, only two alternative courses of action. Upon suspension or termination of an investor, the NASD may direct the investor to either execute an exit transaction or transfer with its PORTAL securities, or liquidate the securities within the PORTAL Market.

The PORTAL Rules permit any person aggrieved by a determination by the Association to deny, suspend or terminate the designation of a PORTAL security or registration of a PORTAL participant to make application for review of the determination under Article IX of the NASD's Code of Procedure.⁴²

D. Description of PORTAL Market Transactions

1. Primary Placements⁴³

An issuer who desires to gain access to PORTAL qualified investors may decide to place a securities allotment of the whole issue or a tranche (block) of an issue in the PORTAL Market. The issuer could negotiate the placement through a PORTAL dealer, who will act as Lead Manager and usually take down the full allotment as principal,⁴⁴ or with a PORTAL broker on a best-efforts basis.

The Manager will set up details of the issue on a screen in the PORTAL Market and release the screen information to potential purchasers for the purpose of obtaining indications of interest. The PORTAL qualified investors will be alerted on the screen that there is a placement pending, and will be able to retrieve the full issue information. Each PORTAL qualified investor will be able to enter its indication of interest or decline participation.

From indications of interest received, the Manager will be able to assess its overall position and make allocations to each PORTAL qualified investor-client. The clients may accept or reject the allocations through the PORTAL Market. Automated confirmations of acceptances of the allocation will be released by PORTAL, from the Manager's input, directly to the investors, who will enter an affirmation or rejection of the transaction.

Settlement of these transactions will occur at DTC (for domestic securities) and CEDEL (for foreign securities). Generally, those depositories will process PORTAL transactions using the same procedures as they use to process non-PORTAL transactions.

⁴² Article IX provides procedures on the handling of grievances.

⁴³ While the NASD designed the PORTAL Market to provide a mechanism for participants to comply with Rule 144A, it stated that it does not believe that use of the primary placement mechanism in PORTAL ensures participants that they have a valid exemption from the registration requirements of the Securities Act for those placements.

⁴⁴ In the alternative, the Lead Manager may negotiate a "firm-commitment" or "best-efforts" underwriting arrangement with the issuer to privately place the securities.

For domestic securities, the PORTAL Market will validate, edit and concert the PORTAL transaction report to the appropriate DTC ID format and transmit the transaction details to DTC's ID system.⁴⁵ If the trade and settlement details are complete, DTC will distribute a legal confirmation on behalf of the Lead Manager to the PORTAL qualified investors and their agents, through ID. If the ID confirmation accurately reflects the PORTAL qualified investor's order, the investor or the investor's agent will send an affirmation to ID. If, however, the ID confirmation does not agree with the PORTAL qualified investor's record of its order, the investor can refuse to affirm the trade, providing the Manager the opportunity to enter appropriate corrections through a corrected PORTAL transaction report that is transmitted to ID. Once the ID system receives the affirmation, it will forward receive instruction to the PORTAL qualified investor's agent and deliver instructions to the Manager.

By settlement date, the Manager will have arranged to take delivery of the offering from the original issuer. This will be effected by a book-entry delivery of the issue to the Manager's segregated PORTAL account at DTC.

On completion of the confirmation/affirmation process, DTC will complete book-entry deliveries on the settlement date (if there are adequate securities in the Manager's account) to the DTC PORTAL accounts of the PORTAL qualified investors, and process the related money settlement as directed. Thus, the securities will move from the Manager's DTC PORTAL account to the purchasing PORTAL qualified investors' agents' accounts.

For foreign securities, PORTAL will compare details of the trades executed through the system.⁴⁶ PORTAL will then send the matched trade reports to ISCC for validation, editing and transmission to DTC's IID system, which allows institutional investors to instruct their agents about trades that the agent is expected to settle on behalf of the investor.⁴⁷ After being instructed to do

⁴⁵ The ID system is an instruction system developed by DTC that permits investors to instruct their settlement agents on trades they expect to settle in DTC.

⁴⁶ For domestic and foreign securities transactions, however, PORTAL participants will have the ability to amend, modify or correct trade reports after they are entered into PORTAL.

⁴⁷ Because PORTAL qualified investors' agent banks will not be members of PORTAL and thus will receive their only settlement instructions through IID, settlement instructions will be separately processed by ISCC and matched again in the IID system. Prior to the agreed settlement date,

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so through IID, the agent will then independently submit settlement instructions to CEDEL to settle the trade on behalf of its customer.

After validating and editing the settlement instructions received from the PORTAL Market, ISCC will convert the data to the appropriate CEDEL format, and transmit it to CEDEL. The buy and sell instructions will be matched at CEDEL and processed for settlement. All movements of assets and cash will be done electronically on the books of CEDEL with no physical movement of securities. The only instance of physical movement during an offering is when the issuer's bank deposits securities with the local depository bank representing CEDEL.

On the sell side, the Lead Manager will have entered its trade confirmations, resulting in transmission to CEDEL through ISCC of PORTAL-generated settlement instructions for delivery. These instructions authorize CEDEL to transfer assets from the Lead Manager's PORTAL account to the individual PORTAL qualified investors' accounts.

On settlement date, the Manager will have arranged to take delivery of the issue from the original issuer. This will be effected in the Manager's segregated PORTAL account at CEDEL. The issuer's agent bank will deposit securities with the local depository bank designated as the depository for the issue.⁴⁸ The issuer's bank will either deliver securities free (for separate payment) or instruct the depository that cash and assets must be exchanged simultaneously. The actual terms will have been negotiated between the Manager and the original issuer. The issuer's bank will deposit securities in the Lead Manager's PORTAL account at CEDEL, and the local depository will advise CEDEL that a good delivery has taken place. CEDEL will make an electronic book-entry credit to the Manager's PORTAL account, reflecting a long position in the issue. If the delivery was against payment, then the Manager's PORTAL cash account will be debited with the funds required.

Where the Lead Manager forms an underwriting syndicate of PORTAL dealers, it will use a separate file of PORTAL dealers to invite indications of

the Lead Manager's PORTAL qualified investor clients will instruct their agent banks to enter settlement details at CEDEL as follows: The automated confirmation produced by the PORTAL system will generate a receive instruction through IID for the investor's money manager, who will in turn instruct the agent bank that it must instruct CEDEL to pay for its account.

⁴⁸ These banks act in a contractual, authorized capacity for CEDEL.

interest. In all other respects, the process will follow the same procedures described above.

2. Secondary Market

The PORTAL secondary market will be comprised of the re-sale of unregistered securities originally placed through the PORTAL Market, and the trading of other 144A-eligible securities that are deposited in the PORTAL depository organizations after having been sold in a primary placement outside of PORTAL. Under the Rules, PORTAL qualified investors may deal only with other PORTAL qualified investors through a PORTAL broker or dealer. No direct dealing is permissible and no quote input capability is available to PORTAL qualified investors. Issues will be priced and quoted in the currency in which the security was issued, with the added flexibility of settlement facilities provided for different currencies. The following describes the processing in PORTAL of several different types of secondary market transactions.

a. *PORTAL dealer to PORTAL broker or dealer.* Having examined the screen for any available quotations (firm or indicative), a PORTAL broker or dealer will contact another PORTAL broker or dealer by telephone to negotiate the trade. Once a trade has been agreed over the telephone, the buying and selling broker-dealers will transmit through PORTAL trade reports containing confirmation details.⁴⁹

⁴⁹ The transaction report is required to be entered in the PORTAL Market the same business day as the execution of the transaction. If a transaction is executed during hours that the PORTAL Market does not accept PORTAL transaction reports, the transaction report will be entered when the PORTAL Market is next open, with the trade date as the date of the execution of the transaction. The transaction report will include: (1) The delivery destination for securities sold in qualified exit transactions, if applicable; (2) the identity of the contra-party purchaser; (3) the price of the security expressed in the currency in which the security was quoted in the PORTAL Market; and (4) the total value of the transaction in the currency in which the transaction will settle. Any modification, correction or cancellation of a PORTAL transaction report must be entered into the PORTAL Market.

The Rules provide the NASD with the authority to establish time limitations on the entry of PORTAL transaction reports. The NASD believes such flexibility is necessary as it is difficult to anticipate the problems that may be encountered in entering the detailed information required in a PORTAL transaction report. Although the Commission finds the current same-day reporting time-frame too long, it has determined to approve the time-frame temporarily to allow the NASD to determine an appropriate reporting requirement during the initial period of PORTAL operation. The NASD, however, has committed to file a rule change within one year of the commencement of operation to reduce the time-frame based on their experience during that year. See letter from Suzanne Rothwell, Associate General Counsel, NASD, to Christine A. Sakach,

PORTAL then will compare the trade date submitted and, if the data matches, produce a single locked-in trade record. In the alternative, either party can enter its side of the transaction report, resulting in the issuance of a confirmation, and the other party can affirm the trade. At this point the transaction record will contain trade details and the relevant settlement instructions of both parties.

For domestic securities, the NASD will then reference a PORTAL master file of standing instructions to pick up the DTC PORTAL accounts of the buyer and the seller. The PORTAL Market will validate and edit the PORTAL transaction report, convert to the appropriate DTC format and transmit the locked-in transaction details to DTC. DTC's Deliver Order ("DO") service will settle the transaction on settlement date by book-entry delivery.⁵⁰

For foreign securities, the PORTAL system will transmit the locked-in trade record produced by PORTAL to ISCC, where system validations, edits and re-formatting of both instructions take place. ISCC then will forward the settlement instructions to CEDEL. CEDEL thus will receive a pre-matched trade, and as long as both parties have sufficient securities (seller) and sufficient cash in the correct currency (buyer), the trade will settle on settlement day.

Where the purchaser is a PORTAL broker, the PORTAL broker will resell the securities as agent to a PORTAL qualified investor as set forth in the example below.

b. *PORTAL broker or dealer to PORTAL qualified investor.* A potential buyer will choose a PORTAL dealer or broker, based in part upon quotations displayed in PORTAL. The buyer will negotiate a transaction over the telephone with the dealer or broker. Then, once the trade is executed, the PORTAL broker or dealer will input a PORTAL transaction report of the sale, which will cause a system-generated confirmation to be sent to the buyer. The PORTAL qualified investor buyer may enter an acceptance or rejection of the transaction. If the investor accepts the trade, the PORTAL Market system will create a locked-in trade record.

For domestic securities, settlement will occur through PORTAL and DTC facilities in the same manner as broker or dealer to broker or dealer trades. In

Branch Chief, Division of Market Regulation, SEC, dated March 27, 1990.

⁵⁰ The DO service provides for automated book-entry for transactions with a broker-dealer on both sides of the transaction.

addition, however, DTC will process the transaction through the ID system as a means of instructing the investor's agent about the transaction.

If the trade details are sufficient, DTC's ID system will distribute a legal confirmation to the investor and its agent. If the ID confirmation accurately reflects the investor's order, the investor or its agent will send an affirmation to ID. If, however, the ID confirmation does not agree with the investor's record of its order, the investor can reject the trade. The PORTAL broker or dealer then has the opportunity to submit corrected trade details to ID. Once an affirmation is received by ID, the system forwards settlement instructions to the PORTAL participants. On completion of the affirmation/confirmation process, DTC will complete a book-entry delivery on the settlement date and process the related money settlement as directed.

For foreign securities, ISCC will split the buy side of the record and convert to IID record format for transmission to DTC. DTC will then pass on settlement instructions to the institution's designated agent bank. The agent bank also will probably receive advice of the trade by some other means (telephone/telex) directly from its institutional client.

The agent bank, having received authorized transaction instructions, will make separate entry of a settlement instruction directly to CEDEL. CEDEL will then receive two instructions, one from ISCC on behalf of the selling PORTAL broker or dealer, and one from the agent bank on behalf of the PORTAL qualified investor. CEDEL will rematch these instructions, and, if securities and funds are available on settlement day, settlement will occur at CEDEL.⁵¹

c. *PORTAL broker or dealer with non-PORTAL broker-dealer (CEDEL/DTC member).* The third possible transaction is a trade between a PORTAL dealer or broker and a non-PORTAL participant.⁵² on conclusion of the transaction, the PORTAL broker or dealer will input a PORTAL transaction report of the sale, indicating whether it is acting as a "principal" or an "agent." PORTAL will produce no locked-in trade report because one of the parties is not a PORTAL participant.

⁵¹ The CEDEL system maintains trade details for settlement for 60 days. If a transaction remains unsettled at that point, it is removed from the system.

⁵² If the PORTAL broker or dealer is the seller, the transaction is an exit transaction and must be executed in compliance with the applicable PORTAL Rules, including the requirement to enter an exit report notifying the NASD of the fact that the transaction was an exit transaction. See discussion of exit transactions at note 69 and accompanying text.

For domestic securities the PORTAL system will validate and edit the one-sided record, convert the data to the appropriate DTC format and transmit the data to DTC. The non-PORTAL customer will independently submit trade details and settlement instructions to DTC. If the non-PORTAL purchaser is a broker-dealer, DTC's DO service will settle the transaction on settlement date by book-entry delivery. If the non-PORTAL purchaser is not a broker-dealer and the trade details are sufficient, the transaction will be processed through DTC's ID system in the same manner as described above. If the PORTAL broker or dealer authorizes DTC to make a delivery out of its account, DTC will complete a book-entry delivery on the settlement date and process the related money settlement as directed.

For foreign securities, ISCC will transmit the one-sided record to CEDEL on behalf of the PORTAL participant. PORTAL will not transmit a report of a locked-in trade because the contraparty is not a PORTAL participant and does not have PORTAL Market access. The seller will have to independently instruct CEDEL to settle the transaction in the same manner it would for a transaction in a non-PORTAL security. CEDEL will then match the buyer's and seller's instructions.

Settlement will occur as it does between any CEDEL participants. If the PORTAL broker or dealer is the buyer, then securities will be entering the PORTAL Market with a verification by the NASD that the securities are PORTAL-designated. If the PORTAL broker or dealer is the seller, then PORTAL securities will be exiting the closed system. The movement of the securities out of the segregated PORTAL account at CEDEL will be reported by CEDEL to ISCC, and by ISCC to the NASD. In addition, the PORTAL broker-dealer executing the exit transaction has to report the transaction to the NASD.

3. Miscellaneous Transactions

Should the settlement of a new issue of securities be delayed, "when, as and if" trading⁵³ is permitted in the

⁵³ "When, as and if" trading occurs in anticipation of, and before, the actual issuance of securities. In the case of a new issue of securities, the availability of the new security to the initial PORTAL purchasers could be delayed, depending on settlement between the underwriter and the issuer and the transfer of the securities by the issuer's custodian bank to the PORTAL depository system. During this period, the PORTAL Rules will allow when, as and if trading of the securities.

PORTAL Market so long as the managing underwriter establishes a settlement date for the securities based on their anticipated availability, and enters a corrected PORTAL transaction report designating a substitute date. "Short" sale transactions are permitted in the PORTAL Market and securities may be borrowed from another PORTAL Market account or from outside the PORTAL Market. A provision is included providing the NASD authority to adopt additional restrictions on "short" sales and the borrowing and return of securities as the NASD deems necessary to prevent violation of the registration requirements of the Securities Act.⁵⁴ The PORTAL Rules also specify that stabilizing bids are permitted.⁵⁵

III. Comments

The Commission received one comment letter in response to its notice of the proposed rule change.⁵⁶ In its letter JPMS expressed concern over the definition of a "qualified exit transaction" stating that, as it stood at the time, it would discourage the deposit of securities into PORTAL because the PORTAL Rules were drafted to preclude certain transactions out of the system that would otherwise be valid under Rule 144A. JPMS stated that full benefit of PORTAL would be realized only if a significant number of issuers and broker-dealers agreed to place securities into PORTAL. JPMS believed, however, that the definition of "qualified exit transaction" in the PORTAL Rules would discourage the deposit of securities into PORTAL because once securities were deposited into the system they could not be sold under Rule 144A to purchasers outside PORTAL.

The NASD addressed this concern in Amendment No. 4 by amending the definition of a qualified exit transaction to include the sale of PORTAL securities to "an account outside the PORTAL Market by or through a PORTAL dealer or broker in a transaction not subject to registration under the Securities Act by reason of compliance with Rule 144A, as determined by the Association, upon the

⁵⁴ Any additional restrictions imposed on short selling in the PORTAL Market would have to be filed with the Commission as required under section 19 of the Exchange Act.

⁵⁵ Stabilization of a security's price to facilitate an offering of the security must be conducted in accordance with Rule 10b-7 under the Exchange Act.

⁵⁶ See letter to Jonathan G. Katz, Secretary, SEC, from Rachel F. Robbins, Managing Director, JP Morgan Securities, Inc., dated December 22, 1989.

submission of an opinion of counsel prior to the transaction."⁵⁷

IV. Discussion

A. Sections 15A(b)(6) and 11A(a)(2) Under the Exchange Act

The Commission has determined to approve the NASD's proposed rule change because the Commission believes implementation and operation of the PORTAL Market is consistent with sections 15A(b)(6)⁵⁸ and 11A(a)(2)⁵⁹ of the Exchange Act.

Section 15A(b)(6) requires, among other things, that the NASD's rules be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to securities, and protect investors and the public interest. In addition to facilitating the trading of Rule 144A securities, the PORTAL Market also will provide a centralized system for the display of interest in Rule 144A securities. Furthermore, it will provide a marketplace for transactions in these securities to which the NASD Rules of Fair Practice, in large part, will apply, and thus will protect investors and the public interest.⁶⁰

In addition, section 11A(a)(1) articulates the Congressional findings and policy goals and objectives respecting the development of a national market system. Essentially, the Congress found that new data processing and communication techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, enhance opportunities to achieve best execution and promote competition among market participants. That provision stresses the importance of implementing communication enhancements that will advance the efficiency and effectiveness of a securities market in servicing the needs of investors. Prior to the development of the PORTAL system, the secondary placement market in unregistered securities was essentially a traditional over-the-counter market, in which negotiations were conducted over the phone without the benefit of a quotation dissemination system, or automated trade comparison and settlement systems. The Commission believes that PORTAL will provide these benefits

and, thus, will enhance the efficiency of the market's operation.

B. Rule 144A Under the Securities Act

Because the NASD has designed the PORTAL Market to facilitate compliance with Rule 144A, section 15A(b)(2) also requires a determination as to whether it is reasonably designed to accomplish this purpose.⁶¹ The Commission has concluded that the PORTAL system is designed to provide that participants who comply with its requirements will also be in compliance with the requirements of Rule 144A, except where information is not provided upon request.⁶²

Rule 144A is available only to institutional investors meeting the definition of "qualified institutional buyer" under Rule 144A(a)(1). A seller is required to form a reasonable belief that a purchaser is a "qualified institutional buyer" as the term is defined in Rule 144A(a)(1).⁶³ With the exception of broker-dealers, a qualified institutional buyer is required to in the aggregate own and invest on a discretionary basis at least \$100 million in securities of non-affiliated issuers.⁶⁴ The PORTAL Rules

⁶¹ Section 15A(b)(2) requires that the NASD be so organized and have the capacity to enforce compliance with, among other things, the federal securities laws.

⁶² We would note that while Rule 144A permits broker-dealers who do not meet the qualified institutional buyer eligibility requirement to execute transactions on a riskless principal basis [Rule 144A(a)(1)(iii)] the PORTAL Rules do not currently permit brokers to act in that capacity. This provision was added to Rule 144A after the rule was proposed, and other modifications were made to the rule as well. Until the final rule was adopted by the Commission, the NASD was not aware of these changes. The Commission anticipates that after the NASD has had an opportunity to review Rule 144A as adopted, it may wish to submit a proposed rule change to the Commission to modify the PORTAL Rules based on the final version of Rule 144A.

⁶³ Rule 144A(d)(1) provides several non-exclusive means of satisfying this requirement. The seller or any person acting on its behalf may rely on the prospective purchaser's most recent publicly available financial statements; the most recent publicly available information appearing in documents filed by the prospective purchaser with the Commission or another governmental agency or self-regulatory organization; or information appearing in a recognized securities manual. These sources must be, as of a date of sale of securities, within 18 months preceding the date of sale in the case of a U.S. purchaser and 18 months for a foreign purchaser. A seller may also rely on a certification by the chief financial officer of the purchaser, or a person fulfilling an equivalent function, specifying the amount of securities owned and invested on a discretionary basis by the purchaser as of a specified date on or since the close of the purchaser's most recent fiscal year.

⁶⁴ Registered broker-dealers acting for their own account, are eligible to purchase as principals under the Rule if they in the aggregate own and invest on a discretionary basis at least \$10 million of securities of a non-affiliated issuer.

The PORTAL Rules require that eligibility pursuant to Rule 144A be demonstrated annually.

require that PORTAL applicants meet the Rule 144A standards for qualified institutional buyers.⁶⁵

Rule 144A(d)(2) requires that the seller of 144A securities take reasonable steps to ensure that the purchaser is aware that the seller may rely on Rule 144A. To meet this requirement of Rule 144A, the PORTAL Rules provide in the registration requirements for PORTAL qualified investors that applicants sign an undertaking that states that they are aware that they may purchase a PORTAL security from another qualified investor who may rely on an exemption from the provisions of section 5 of the Securities Act pursuant to Rule 144A.

The PORTAL Rules also have eligibility requirements for admitting securities into the PORTAL system that parallel the Rule 144A eligibility requirements for securities. The PORTAL Rules require, in fact, that the security be eligible to be sold pursuant to Rule 144A under the Securities Act. The application for designation of a PORTAL security requires the submission of specific information necessary to support the applicant's claim that the security meets the requirements of Rule 144A. In addition, the Rules provide the NASD with the authority to request any additional information that the NASD believes is necessary to make a determination of whether a security is eligible under Rule 144A.

In addition, certain securities' eligibility under Rule 144A is conditioned on certain information being available to holders and prospective purchasers. The rule provides that, with respect to those securities, the holder and a prospective purchaser designated by the holder must have the right to obtain from the issuer, upon request of the holder, and the purchaser must have received at or prior to the time of sale, upon such purchaser's request to the holder, certain information about the issuer.⁶⁶ Because the PORTAL Rules require that a security meets the Rule 144A security eligibility requirements prior to designation, the NASD must, as part of the PORTAL security designation process, assess whether the issuer is required to provide such information to holders and prospective purchasers. In

⁶⁵ See PORTAL Rules part III, section 1(b)(1) and part IV, section 1(b)(1).

⁶⁶ Paragraph (d)(4) of Rule 144A requires this information only where the issuer does not file periodic reports under the Exchange Act, does not furnish home country information to the Commission pursuant to Rule 12g3-2(b), and is not a foreign government eligible to register securities under the Securities Act on Schedule B.

⁵⁷ See PORTAL Rules part I, section 18(b)(4).

⁵⁸ 15 U.S.C. 78o-3 (1982).

⁵⁹ 15 U.S.C. 78k-1 (1982).

⁶⁰ In its filing, the NASD specified those Rules of Fair Practice that would apply in their entirety, those that would partially apply and those that would not apply to trading in the PORTAL Market.

addition, the NASD's ongoing obligations to ensure that the security remains eligible for PORTAL require the NASD to remove the security from the PORTAL system if it discovers that the information-supplying requirement is not being met.

In addition to structuring the PORTAL Rules to provide that participants who comply with its requirements also are in compliance with the requirements of Rule 144A, the NASD structured PORTAL to limit the possibility that unregistered securities enter the U.S. retail market. For example, PORTAL participants must agree to deposit and maintain all PORTAL securities in the investor's segregated PORTAL account at the PORTAL depository until the securities are (1) sold or transferred to another PORTAL account in the PORTAL Market or (2) sold or transferred to a non-PORTAL account in a qualified exit transaction or qualified exit transfer.⁶⁷ PORTAL investors must agree to transfer ownership of a PORTAL security only in a sale transaction in the PORTAL Market, in other words, through a PORTAL dealer or broker.⁶⁸

All exit transactions from the PORTAL Market are required to be made in compliance with the PORTAL Rules. The PORTAL Rules permit the sale of PORTAL securities to an account outside the PORTAL Market in a transaction registered under section 5 of the Securities Act or not subject to such registration by reason of compliance with Securities Act Release No. 4708,⁶⁹ Regulation S,⁷⁰ Rule 144, or Rule 145; or

⁶⁷ PORTAL securities that are deposited into the PORTAL depository system shall remain in those accounts until the depository receives appropriate settlement instructions from a PORTAL dealer or broker to deliver such securities out of the depository in a qualified exit transaction.

⁶⁸ This provision is intended to prohibit a PORTAL qualified investor from transferring ownership in a PORTAL security to another PORTAL participant outside of the PORTAL Market or to a non-PORTAL qualified investor in a transaction that does not meet the restrictions on qualified exit transactions or qualified exit transfers.

⁶⁹ (July 9, 1984), 29 FR 9828. Release No. 4708 will only be available 90 days after the date Regulation S is adopted. The NASD will have to submit an amendment to the PORTAL Rules to clarify that Release No. 4708 will only be available for this limited time.

⁷⁰ Regulation S will clarify the extraterritorial application of the registration requirements of the Securities Act. The regulation will provide, generally, that any offer or sale that occurs within the U.S. is subject to section 5 of the Securities Act and any offer or sale that occurs outside the U.S. is not subject to section 5 of the Securities Act. Additionally, the regulation will provide safe harbors for specified transactions. See Securities Act Release No. 8863, April 24, 1990.

with Rule 144A, as determined by the Association, upon submission of an opinion of counsel prior to the transaction. In addition, exit transactions are permitted where the issuer is repurchasing its securities. Finally, exit transactions are permitted where the seller has demonstrated to the NASD on a pre-exit basis that the transaction is exempt from Commission registration and the purchaser will acquire securities that can be freely resold without registration under the Securities Act.⁷¹

The PORTAL Rules also permit PORTAL participants to return securities borrowed from a non-PORTAL account. Such a transfer must be made in compliance with the PORTAL Rules for qualified exit transfers. To ensure that a transfer of PORTAL securities to an account outside the PORTAL Market is not, in fact, a sale transaction, the PORTAL Rules include restrictions on the exit transfer of securities in the definition of qualified exit transfer. Securities can be borrowed from outside the PORTAL Market to cover a "short" position and returned, but PORTAL securities in the PORTAL Market cannot be loaned to an account outside of the PORTAL Market.

Each PORTAL dealer and PORTAL broker that executes a qualified exit transaction or a qualified exit transfer in a PORTAL security is required to enter in the PORTAL Market a PORTAL transaction report. Daily reports from the PORTAL depository organizations will identify PORTAL dealers and brokers that effect exit transactions in PORTAL securities without an entry of a transaction report. Because PORTAL dealers and brokers are required to enter a transaction report for transfers out of the PORTAL Market, the NASD will have a PORTAL-generated record of the exit of borrowed securities. By comparing the daily reports from the PORTAL depository organizations with the exit reports filed by participants, the NASD will be able to track the exit of securities by PORTAL dealers and brokers.⁷²

The NASD will conduct examinations of each PORTAL dealer and broker every six months to review, among other things, the member's compliance with the qualified exit transaction and transfer restrictions of the PORTAL

⁷¹ Should a similar system for secondary trading of Rule 144A securities be approved by the Commission, the Commission believes that nothing in the PORTAL Rules would prohibit a PORTAL participant from freely transferring securities from its PORTAL account to that system.

⁷² A qualified investor who effects an exit transfer must also file an exit report with the NASD.

Rules.⁷³ The NASD believes that this frequent post-transaction review of PORTAL dealers and brokers will be sufficient to determine whether a broker-dealer has complied with the restrictions on resale in the PORTAL Rules.⁷⁴

For these reasons the Commission concludes that the PORTAL system is reasonably designed to facilitate compliance with Rule 144A, so long as there is compliance with the PORTAL Rules and procedures, except where information is not provided on request.

C. Exemptions and No-Action Requests

1. Rule 15c2-11

In its filing, the NASD requested, pursuant to Rule 15c2-11(h), that the Commission grant an exemption from Rule 15c2-11 for the publication or display of quotations in eligible securities through the PORTAL Market. Under the rule, a broker-dealer must have in its records certain information about the issuer before publication or submission of quotations in a quotation medium. The NASD believes that an exemption from the requirements of Rule 15c2-11 is appropriate because only sophisticated investors may participate in the PORTAL Market. The NASD noted that access to the PORTAL Market on a principal basis is limited to PORTAL dealers and PORTAL qualified investors. Moreover, PORTAL dealers and PORTAL qualified investors that seek to participate in a PORTAL transaction must meet the Rule 144A qualified institutional buyer criteria and must meet continuing requirements to ensure that a member complies with PORTAL restrictions on the execution of transactions in PORTAL securities.

The NASD noted that Rule 15c2-11 is intended to assure that, in the context of lesser-known securities, information on the securities is available to the broker-dealer when it formulates the price of the security. In the NASD's view, the PORTAL Market ensures that investors are sophisticated and are in a position to evaluate, independently of the PORTAL dealer and PORTAL broker, the price of the security and to obtain additional information from the issuer or

⁷³ The PORTAL Rules also provide the NASD authority to obtain from PORTAL qualified investors any information or document necessary to determine whether they have complied with the restrictions on qualified exit transactions and transfers.

⁷⁴ The PORTAL Rules provide the NASD with the authority to discipline its members and to suspend or terminate the registration of PORTAL participants who engage in violative transactions. See *supra* at note 37.

otherwise obtain information about the issuer.

The Commission finds it appropriate to grant the NASD an exemption from Rule 15c2-11, pursuant to the provisions of Rule 15c2-11(h), with respect to the publication or submission of quotations through the PORTAL Market. In a letter issued today to the NASD, the Commission has exempted from Rule 15c2-11 the publication or submission of quotations through the PORTAL Market for securities: (1) Issued by a foreign government; (ii) listed for trading on a "specified foreign securities market" ⁷⁵ or (iii) rated by at least one nationally recognized statistical rating organization, as the term is used in Rule 15c3-1 ⁷⁶ under the Exchange Act, in one of its generic rating categories that signifies investment grade.⁷⁷

2. Section 12

The NASD made a request for relief from certain provisions of section 12 of the Exchange Act, to which the Division of Corporation Finance has already responded, granting some of the relief the NASD requested and denying one of the requests.⁷⁸ Specifically, the NASD requested that PORTAL qualified investors in domestic and foreign equity securities not be counted as recordholders for purposes of determining whether registration is required under section 12(g) of the Exchange Act and that the Commission take the position that foreign private issuers with a class of equity securities trading on PORTAL could rely on the exemption provided by Rule 12g3-2(b) from the registration requirements of section 12(g).

Issuers who have a class of equity securities held of record by more than 500 persons and whose assets exceed \$5 million are required to register such securities under section 12 of the Exchange Act. Rule 12g3-2 provides an exemption from that registration requirement for any foreign private issuer if the class has fewer than 300 holders resident in the U.S. The NASD requested that PORTAL qualified investors holding PORTAL securities,

domestic and foreign, not be counted toward the shareholder threshold of section 12(g). In its letter the Division of Corporation Finance, however, disagreed with the NASD and stated that it is of the view that such investors should be counted in determining whether the issuer must register under section 12(g). While foreign private issuers who reach the threshold will be entitled to rely on the exemption in Rule 12g3-2(b), the Division of Corporation Finance believes that domestic issuers with a class of equity securities held of record by 500 or more persons should be required to register under section 12(g) and become subject to the reporting requirements of sections 13, 14 and 16 under the Exchange Act.

Rule 12g3-2(b) provides an exemption from the registration requirements of section 12(g) for any foreign private issuer that furnishes to the Commission copies of the information required to be made public under the laws of its country of domicile. This exemption is not available to a foreign private issuer whose securities are traded on an "automated inter-dealer quotation system."⁷⁹ The Division of Corporation Finance, however, stated in its letter that it will not recommend that the Commission take enforcement action if a foreign private issuer does not register its PORTAL-traded securities under section 12(g), if such issuer would be entitled to rely on the exemption provided by Rule 12g3-2(b) except for the fact that its securities are quoted in the PORTAL Market, so long as such issuer complies with the requirements of the Rule 12g3-2(b) exemptions.⁸⁰

V. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with the requirements of the Act, and that it is appropriate to approve the NASD PORTAL Rules.

The Commission finds good cause for approving those portions of the NASD's proposal that were amended by Amendment No. 7 prior to the 30th day after the date of publication of the amendments in the Federal Register. The original filing was the subject of a 35-day notice period that generated only one comment letter. In addition, the amendment, while designating a new PORTAL depository, did not raise

significant, new issues. Finally, a corresponding proposed rule change that fully described DTC's participation in the PORTAL system was published for comment and no comments were received.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 7. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing also will 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 May 25, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and is hereby approved.

By the Commission.
Dated: April 27, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-10405 Filed 5-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27955; File No. SR-CBOE-90-07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Extension of OEX RAES Eligibility Standard

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 April 25, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

⁷⁵ The term "specified foreign securities market" shall mean any market for trading securities that is determined by the Division of Market Regulation to constitute a "ready market," as that term is defined in Rule 15c3-1 under the Exchange Act.

⁷⁶ 17 CFR 240.15c3-1 (1989).

⁷⁷ See letter from Jonathan G. Katz, Secretary, SEC, to Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated April 27, 1990.

⁷⁸ See letter from Mary E.T. Beach, Associate Director, Division of Corporation Finance, SEC, to Frank V. Wilson, Executive Vice President and General Counsel, NASD, dated January 16, 1990. ("January letter").

⁷⁹ For purposes of all rules, regulations, forms and schedules under the Securities Act and the Exchange Act, the PORTAL Market will not be considered an "automated inter-dealer quotation system" or an "electronic inter-dealer quotation system."

⁸⁰ See January letter, note 78, *supra*.

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 CBOE seeks an extension until October 22, 1990, of the pilot program governing the Exchange's eligibility standards for participation in the CBOE's Retail Automatic Execution System ("RAES") for options on the Standard and Poor's 100 Index ("OEX").¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In October 1989 the Commission approved on a pilot basis a CBOE proposal to amend the Exchange's eligibility standards for individuals and groups to participate in RAES trading for OEX.² The pilot program restricts RAES participation to market makers who are members of the OEX or Standard & Poor's 500 Index Option ("SPX") trading crowds by requiring that an eligible market maker execute 50% of its market maker contracts for the preceding quarter in OEX or SPX, and execute 25% of these trades in person. A member must meet these requirements before the member may participate in RAES individually or as a member of a

group and the Index Floor Procedure Committee ("IFPC") may bar, restrict or condition a group account's participation in RAES if any member of the group fails to meet OEX/SPX market maker requirements.

The pilot program also modifies the eligibility requirements for group accounts operating on RAES and imposes additional obligations on group accounts by prohibiting the "purchasing" of RAES rights from an OEX or SPX market maker and by requiring that all OEX/RAES group participants be afforded a reasonable right to participate in the group's profits and losses. No member may participate directly or indirectly in more than one OEX/RAES group, and a group may be managed only by a member of the group. The program also specifies the maximum number of allowable participants in any one RAES group account and clarifies the authority of the IFPC to limit group size.

Once a group account has been logged onto RAES, all members of the group are required to remain on RAES until the next monthly OEX expiration. Group participants may be relieved of their RAES obligations only with the approval of the IFPC. In addition, the IFPC may impose a sign off fee of \$500.00 per member when a group account improperly signs off RAES.

The pilot program also provides the IFPC with additional authority to ensure adequate RAES participation in OEX by allowing the IFPC to require market makers who are members of the OEX trading crowd to log on RAES, absent reasonable justification or excuse for non-participation, if the IFPC believes there is inadequate RAES participation in OEX. If RAES participation continues to be inadequate, the IFPC may request participation of all market makers whether or not they are members of the OEX trading crowd.

Since implementation of the pilot program governing the eligibility standards for RAES participation in OEX, the Exchange has found that the pilot program's rules provide adequate market maker participation in RAES while limiting the system to those market makers necessary for its operation. Adequate market maker participation in RAES helps the Exchange to maintain a fair and orderly market and to protect investors by ensuring the continued availability of RAES to public customers.

Moreover, during the six months that the program has been in operation, the Exchange has not experienced significant problems with the program, including the potential problems

identified by one commentator to the program when originally proposed.³ Specifically, the pilot program has resulted in adequate OEX/RAES participation.⁴

Because the pilot program has operated successfully since its inception the Exchange proposes an extension of the program for an additional six months, until October 22, 1990.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirement of section 6(b)(5) of the Act, which provides, among other things, that the rules of the Exchange are to be designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any 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

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 thereunder.⁵ In particular, the Commission finds that the extension of the pilot is consistent with section 6(b)(5) of the Act because the program has succeeded in providing adequate market maker participation in RAES, thereby helping the Exchange to provide a fair, orderly and efficient market. The

¹ The Commission approved the CBOE's current RAES eligibility standards on a six-month pilot basis on October 24, 1989. See Securities Exchange Act Release No. 27378 (October 24, 1989), 54 FR 46168 (order approving File SR-CBOE-87-22, Amendment No. 2). On April 25, 1990, the CBOE filed the present proposed rule change seeking an extension of approval for the pilot until the Exchange requested permanent approval for the program. Subsequently the Exchange amended the present filing to request an extension of approval for a period of six months, until October 22, 1990. See letter of Robert P. Ackerman, Vice President, Legal Services, Chicago Board Options Exchange, Inc. to Thomas R. Gira, Branch Chief, Office of Self-Regulatory Organizations, SEC, dated April 25, 1990.

² See footnote 1, *supra*.

³ See Securities Exchange Act Release No. 27378 (October 24, 1989), 54 FR 46168 (order approving File SR-CBOE-87-22, Amendment No. 2).

⁴ Since the pilot program was implemented, the CBOE has found that approximately 140 market makers participate in RAES for options on the OEX each day. The lowest number of market makers to participate in RAES for options on the OEX was approximately 105. See letter from Philip Skokum, Chicago Board Options Exchange, Inc., to Yvonne Freticelli Staff Attorney, SEC, dated April 27, 1990.

⁵ 15 U.S.C. 78(b)(5) (1982).

presence of an adequate number of market makers helps the Exchange to maintain market quality and ensures the effective execution of investor orders at the best available prices. In addition, the potential problems identified by the commentator to the program as originally proposed have not occurred.

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to permit uninterrupted the continuation of the pilot program. In addition, because there have been no adverse comments concerning the pilot program since its implementation and because of the importance of maintaining the quality and efficiency of the CBOE's markets, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 25, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change (SR-CBOE-90-07) relating to an extension of the pilot program is approved until October 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 27, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10406 Filed 5-3-90; 8:45 am]

BILLING CODE 0000-00-M

[Rel. No. IC-17462; 812-7477]

The Burnham Fund Inc.; Application

April 27, 1990

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The Burnham Fund Inc., formerly The Drexel Burnham Fund Inc.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and Rules 22c-1 and 22d-1 thereunder.

SUMMARY OF APPLICATION: The applicant seeks an amendment to an existing order under section 6(c) (the "Existing Order") which permits the applicant to impose a contingent deferred sales load (a "CDSC") on redemptions of its shares in certain cases. The requested relief would permit the applicant to impose a CDSC on redemptions of its shares under additional circumstances.

FILING DATE: The application was filed on February 12, 1990 and amended on March 30, 1990 and April 24, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 25 Broadway, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The applicant is a diversified, open-end management investment company registered under the 1940 Act. The applicant was incorporated under the laws of Delaware on October 19, 1960 and reincorporated under the laws of Maryland on September 7, 1989.

2. The applicant's investment adviser is Burnham Asset Management Corporation (the "Adviser") and its distributor is Burnham Securities Inc. (the "Distributor"). Before September 7, 1989, the applicant's adviser and distributor were, respectively, Drexel Management Corporation and Drexel Burnham Lambert Incorporated.

3. The shares of the applicant are offered to investors at net asset value plus a front-end sales load that declines depending upon the amount invested. The applicant waives the front-end sales load on shares purchased by or on behalf of any officer, director, account executive, or full-time employee of the applicant, the Adviser, the Distributor, or any company affiliated with the Adviser or the Distributor. The Existing Order permits the applicant to impose a CDSC on redemptions of shares with respect to which the front-end sales load has been waived when such redemptions occur within 90 days of the date of purchase.

4. The applicant intends to waive the front-end sales load on shares purchased under additional circumstances. The applicant seeks an amendment to the Existing Order to impose a CDSC upon a redemption of shares purchased by any individual for whom the entire front-end sales load had previously been waived if the redemption is made within 90 days of the date that the shares were purchased. The CDSC would be equal to the applicable front-end sales load, had such load not been waived, on the lesser of the net asset value of the shares at the time of purchase or the net asset value at the time of redemption. The maximum amount of the CDSC, or any combination of deferred sales load and any sales load payable at the time the shares are purchased, will not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair

⁶ 15 U.S.C. 78a(b) (1982).

Practice promulgated by the NASD. No amount will be charged to shareholders or the applicant that is intended as payment of interest or any similar charge related to a CDSC, nor will any CDSC be imposed on an amount that represents an increase in the value of applicant's shares due to capital appreciation or on shares, or amounts representing shares, purchased through reinvestment of dividends or capital gain distributions.

5. The applicant requests that the proposed relief extend to any future portfolios of the applicant. The applicant further requests that the proposed relief, as well as the exemptive relief previously granted, as such relief may be modified pursuant hereto, extend to any open-end management company established or acquired in the future by the Adviser, or any affiliated person of the Adviser as defined in section 2(a)(3) of the Act, that is part of the same group of investment companies (as defined in Rule 11a-3 under the Act) as the applicant.

Applicant's Legal Conclusions

Applicant submits that the requested exemption is appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. The intended effect of the waiver of the sales load is to encourage those individuals who may be involved in the management, administration, or marketing of the shares of the applicant to acquire and maintain an equity position in the applicant. To further promote this objective, and because short-term trading in shares of the applicant would defeat the purpose of the waiver, applicant has proposed the CDSC described above. The effect of the imposition of the CDSC upon the redemption of certain shares purchased by individuals for whom the front-end sales load has been waived would merely be to impose a condition on the availability of the waiver, namely that shares purchased subject to the waiver be held for 90 days.

Applicant's Condition

The applicant will comply with the representations in the application concerning its CDSC arrangements and the provisions of proposed Rule 6c-10 under the 1940 Act, as such rule is currently proposed and as it may be repropoed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10407 Filed 5-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25079]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 27, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 21, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New, England Electric System (70-7723)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a post-effective amendment to its declaration filed under Section 12(b) of the Act and Rule 45 thereunder.

By order of the Commission dated January 16, 1990 (HCAR No. 25025), NEES was authorized, among other things, to make, from time-to-time through December 31, 1990, one or more capital contributions to Massachusetts Electric Company ("Mass Elec") and The Narragansett Electric Company ("Narragansett"), both wholly owned

subsidiaries of NEES, not to exceed an aggregate amount of \$50 million for Mass Elec and \$20 for Narragansett.

NEES now proposes to make, from time-to-time through December 31, 1991, one or more capital contributions to Granite State Electric Company ("Granite") not to exceed an aggregate amount of \$3 million. The proposed capital contributions will permit Granite to raise external funds while maintaining appropriate balances of debt and equity.

Southwestern Electric Power Company (70-7749)

Southwestern Electric Power Company ("Southwestern"), 428 Travis Street, Shreveport, Louisiana 71156, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed an application-declaration pursuant to Sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Southwestern proposes to incur obligations in connection with the issuance, in 1991, of Pollution Control Revenue Refunding Bonds, Series 1991A (Southwestern Electric Power Project) ("Series 1991 Bonds") by Titus County Fresh Water Supply District No. 1, Texas ("District"), up to an aggregate principal amount of \$17,125,000. The Series 1991 Bonds will bear interest at a rate of approximately 8%, payable semi-annually, will mature on August 1, 2011, and will be subject to certain mandatory and optional redemption provisions, and sinking fund provisions. The issuance of the Series 1991 Bonds is to be part of the forward refunding ("Refunding") of the District's outstanding Pollution Control Revenue Bonds, 1981A Series (Southwestern Electric Power Company Project) ("Series 1981A Bonds"), which bears interest at the fixed rate of 12 1/8% per annum until maturity. The proceeds of the issuance of the Series 1991 Bonds will be applied towards the defeasance and redemption of the Series 1981A Bonds. The Series 1981A Bonds were originally issued to finance the construction and acquisition of certain air pollution control facilities at Southwestern's Welsh Power Plant, in Titus County, Texas. There are presently \$17,125,000 in aggregate principal amount of the Series 1981A Bonds outstanding.

The Refunding contemplates that the District will enter into a bond purchase agreement, in April 1990, in which Morgan Stanley & Co., Inc., will act as placement agent, for the sale of the Series 1991 Bonds to certain purchasers, with the settlement of the sale to take

place on May 3, 1991, the earliest date that the Series 1981A Bonds can be defeased in anticipation of their redemption. Southwestern believes that, although the Series 1981A bonds may not be legally defeased before May 3, 1991, or redeemed before August 1, 1991, it is desirable to sell the Series 1991 Bonds, subject to the conditions of the bond purchase agreement, at current market rates. Any funds, in addition to the proceeds of the Series 1991 Bonds, required to pay for the redemption, including the cost of the redemption of the Series 1981A Bonds and the cost of issuance of the Series 1991 Bonds, will be provided by Southwestern from internally generated funds and short-term borrowings.

Additionally, Southwestern proposes that additional terms and conditions applicable to the Series 1991 Bonds will be determined by negotiations between Southwestern and the purchaser or purchasers under an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10408 Filed 5-3-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Economic and Business Affairs Office

[Public Notice 1196]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 1:30 p.m., May 14, 1990 in room 1105 of the Department of State, 2201 C Street NW., Washington, DC.

The United States Organization, and in particular the National Committee as its steering body, assists and advises the Department on matters concerning international CCIR activities. The purpose of the meeting will be to review and consider preparations for the upcoming CCIR Plenary Assembly to be held May 21-June 1, 1990, in Dusseldorf, Federal Republic of Germany.

Members of the public may attend and join in discussions subject to instructions of the Chairman and to available seating. Participants must indicate their desire to attend in advance by contacting the office of Richard Shrum, Department of State,

Washington, DC; phone (202) 647-2592, telefax (202) 647-0158, to pre-register. Entrance to the building is controlled and attendees must use the main entrance at 22nd and C Streets.

Date: April 25, 1990.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-10431 Filed 5-4-90; 8:45 am]

BILLING CODE 4710-07-M

Secretary of State's Advisory Committee on Private International Law Study Group on International Electronic Transactions Meeting

The Advisory Committee study group on International Electronic Transactions will hold its fourth meeting on Friday, May 18th from 9:30 a.m. until 2 p.m. at the United States Mission of the United Nations, 12th floor conference room, located at 799 United Nations Plaza, New York, NY (45th Street and 1st Avenue).

The purpose of the meeting is to review progress on the project of the United Nations Commission on International Trade Law (UNCITRAL) project to prepare a model national law on electronic funds transfers, and to develop guidance for United States positions at future UNCITRAL Working Group meetings on this subject.

The agenda of the Study Group will include a review of the work done at two preceding UNCITRAL Working Group meetings in July 1989 and December 1989. The Reports of the Working Group meetings are set forth in United Nations document A/CN.9/328, August 15, 1989, and A/CN.9/329, December 22, 1989. In addition, the Secretariat has prepared a commentary on the draft model law set forth in U.N. Doc. A/CN.9/WG.1V/WP.44, September 18, 1989. The relationship between the Working Group draft model law and the proposed new Uniform Commercial Code Article 4(A) approved by the National Conference of Commissioners on Uniform State Laws will be discussed. The study group will also review a proposal under consideration by the United States that UNCITRAL be asked to develop two sets of rules for funds transfers—one intended to cover high speed transfers relying on electronic clearing systems and the other applicable to traditional transactional methods now provided for under numerous national laws.

Additional information on the meeting, including copies of the draft model law and the referenced UN documents may be obtained from the

Department of State by contacting Harold S. Burman, Office of the Legal Adviser (L/PIL), 2100 "K" Street, suite 402, Washington, DC 20037, or by calling (202) 653-9852. Further information on the UNCITRAL project may be obtained by contacting the United Nations Sales Section, New York NY at (212) 963-8302 and ordering the "UNCITRAL Legal guide on Electronic funds Transfers" (refer to Sales document No. E.87.V.9), and subsequent reports of the UNCITRAL Secretariat and Working Group on International Payments.

Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chair. As access to the United States Mission is controlled, persons wishing to attend should notify the above mentioned Legal Adviser's Office not later than May 15 of their name, affiliation, address and telephone number. Persons interested but unable to attend the meeting may submit written comments or proposals to the Office of the Legal Adviser at the address indicated above.

Dated: April 27, 1990.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 90-10357 Filed 5-3-90; 8:45 am]

BILLING CODE 4710-08-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries Denying Market Opportunities for Government-funded Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying market opportunities for U.S. products, suppliers or bidders for government-funded construction projects.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended, the United States Trade Representative (USTR) has decided not to include any countries at this time on the list of countries that deny market opportunities for products, suppliers or bidders for government-funded construction projects.

EFFECTIVE DATE: April 30, 1990.

FOR FURTHER INFORMATION CONTACT: William Piez, (202) 395-5070, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: Section 115 of Public Law 100-223, the Airport and Airway Safety and Capacity Expansion Act of 1987, amended the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201-2225) ("Airport Act"), by adding section 533. Section 533(a) provides certain requirements and prohibitions applicable to use of funds from the Airport and Airway Trust Fund. Section 533(b) requires the USTR to make determinations with respect to whether foreign countries deny fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects of \$500,000 or more and are funded (in whole or in part) by the governments of such foreign countries. Section 533(c) requires the USTR to maintain a list of countries identified under section 533(b) and to publish such list annually in the Federal Register.

Section 533(b)(2) specifies that the USTR, in considering which countries to list, shall take into account those foreign countries that are listed in the annual report on foreign trade barriers required under section 181(b) of the Trade Act of 1974 as maintaining barriers to U.S. construction services for certain construction projects. Japan is listed in the 1990 report with respect to barriers to the provision of U.S. construction, architectural, and engineering services.

On November 21, 1989, pursuant to section 1305 of the Omnibus Trade and Competitiveness Act of 1988, Public Law No. 100-418, I determined under section 304(a)(1)(A) of the Trade Act of 1974, as amended ("Trade Act"), that certain acts, policies and practices of the Government of Japan with respect to Japanese barriers to the procurement of architectural, engineering, and construction services, and related consulting services were unreasonable and burdened or restricted U.S. commerce.

At the same time, I determined, under section 304(a)(1)(B) of the Trade Act that no responsive action under section 301 of that act was appropriate at that time in light of Japanese Government commitments to improve access by U.S. firms to its market and to consult with the United States on all unresolved matters regarding access to the construction market.

The Government of Japan agreed, among other things:

- To adopt two new administrative measures to deter collusive activities;
- To make public more information on the nature of specific projects being tendered in order to enable potential bidders more accurately to assess whether they possess the technical capabilities required for design;

- That commissioning entities will refrain from determining the share of any company in a joint venture or the segment of the project that a company may undertake;

- To open two additional elements of the design of the Kansas International Airport to non-discriminatory competition; to encourage procuring agencies for other airport projects to follow non-discriminatory procedures; and to announce decisions to contract for the design for specified projects in the annual plans of the commissioning authority; and

- That procuring entities will publish a notice of the intention to procure all major goods and services at the same time they announce the major project.

Since November 21, 1989, the Government of Japan has taken steps to implement the above actions. In particular, Japan has taken administrative measures to deter collusive activities and is carrying out the other procedural changes described above. In addition, since November 21, 1989, the Government of Japan has announced the award of some new construction services contracts to U.S. firms for public works. The value of such contracts, which are covered under the provisions of the Major Projects Arrangements, now totals at least \$120 million. Additional contracts are in prospect.

In view of the commitments that the Government of Japan has made under the Major Projects Arrangements of May 1988 and in response to the section 1305 investigation, and given the recent award of contracts to U.S. firms, I do not now determine that Japan denies fair and equitable market opportunities for U.S. products, suppliers or bidders for construction projects in Japan for the purposes of section 533(b) of the Airport Act. Accordingly, no countries will be included at this time on the list required by section 533(c) of that act.

Nevertheless, I consider that difficulties remain in access by U.S. firms to the Japanese Government-funded construction market. These include but are not limited to:

- A designated bidder system that limits competition by controlling the number of firms allowed to bid—a system that operates with greatest effect against new entrants;
- The exclusion of foreign firms from bidding on contracts outside the Major Projects Arrangements, unless they have had prior experience in Japan, which can be gained only under the Arrangements or in the private sector; and

Less effective provision of information about potential new contracts on projects outside the Arrangements.

The United States is monitoring under section 306 of the Trade Act the Government of Japan's implementation of its undertakings regarding access to its government-funded construction market and intends to seek a satisfactory resolution of all remaining concerns in ongoing bilateral negotiations, including in a full review of the Major Projects Arrangements in early May. I will take into account Japan's implementation of its undertakings and our progress in negotiations in making my determination under section 533(b) of the Airport Act next year.

List Pursuant to section 533(c): None.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 90-10389 Filed 5-3-90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Final Passenger Motor Vehicle Theft Data for 1988; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Corrections to final theft data for 1988.

SUMMARY: This notice corrects typographical errors in the final passenger motor vehicle theft data for model year (MY) 1988 that were published on March 1, 1990 (54 FR 7406). Two car lines were identified as being manufactured by the wrong manufacturer, the wrong theft rate was provided for one car line, and additional data submitted by Mazda was inadvertently omitted from the final passenger motor vehicle theft data for MY 1988.

EFFECTIVE DATE: May 4, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-4808.

SUPPLEMENTARY INFORMATION: The following list corrects errors in NHTSA's final listing of theft rates for all MY 1988 car lines published on March 1, 1990 (54 FR 7406). This amended list does the following: Identifies the manufacturer of the Dodge 600 as Chrysler Corporation (Number 23); identifies the manufacturer of the Ford Tempo as Ford Motor Corporation

(Number 79); provides the correct theft rate of the Toyota Corolla/Corolla Sport as 4.5263 (Number 83), and adds additional data submitted by Mazda that was inadvertently omitted from the final passenger motor vehicle theft data for MY 1988. The data submitted by Mazda results in combining the Mazda 626 and MX-6 car lines. The agency finds that, under the definition of "car

line" in § 541.4 of 49 CFR part 541, the Mazda 626 and MX-6 should have been shown as the same car line in the initial listing. The theft rate of the combined 626 and MX-6 remains the same.

The following corrected list represents NHTSA's calculation of theft rates for all 1988 car lines. This list is only intended to inform the public of 1988 motor vehicle theft experience and does

not have any effect on the obligations of regulated parties under the Cost Savings Act.

Authority: 15 U.S.C. 2023; delegation of authority at 49 CFR 1.50.

Issued on May 1, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (MFGP's) 1988	Theft rate (thefts/product) (1988) (1,000's)
1	General Motors	Pontiac Firebird/Trans AM	1,659	56,449	29.3894
2	General Motors	Chevrolet Camaro	2,329	90,484	25.7394
3	General Motors	Chevrolet Monte Carlo	674	28,603	23.5640
4	Mitsubishi	Cordia	86	4,119	20.8789
5	Mitsubishi	Starion	78	3,945	19.7719
6	Chrysler Corp.	Chrysler Conquest	178	9,581	18.5784
7	Mitsubishi	Mirage	323	17,735	18.2126
8	Aston Martin	Saloon/Vantage/Volante	1	56	17.8571
9	Volkswagen	Cabriolet	185	10,931	16.9243
10	General Motors	Pontiac Fiero	381	25,371	15.0171
11	Hyundai	Excel	3,326	231,551	14.3640
12	Porsche	911	93	6,532	14.2376
13	Volkswagen	Scirocco	50	3,690	13.5501
14	Alfa Romeo	Milano	24	1,870	12.8342
15	General Motors	Cadillac Brougham	580	48,984	11.8454
16	Porsche	928	19	1,613	11.7793
17	General Motors	Chevrolet Corvette	223	21,282	10.4783
18	Toyota	Supra	209	20,122	10.3866
19	Toyota	MR2	98	9,571	10.2393
20	Nissan	300ZX	206	20,224	10.1859
21	General Motors	Pontiac Bonneville	973	96,356	10.0980
22	Isuzu	I-Mark	248	24,684	10.0470
23	Chrysler Corp.	Dodge 600	166	17,080	9.7190
24	Isuzu	Impulse	88	9,070	9.7023
25	Ford Motor Co.	Ford Mustang	1,750	180,724	9.6833
26	General Motors	Cadillac Seville	214	22,432	9.5399
27	Chrysler Corp.	Dodge Shadow	853	91,304	9.3424
28	Honda	Prelude	688	77,601	8.8659
29	General Motors	Chevrolet Spectrum	529	61,377	8.6189
30	Volkswagen	Jetta	514	59,899	8.5811
31	Chrysler Corp.	Lebaron Coupe/Convertible	686	85,956	7.9808
32	General Motors	Cadillac Fleetwood/Deville	1,163	147,000	7.9116
33	Chrysler Corp.	Chrysler Fifth Avenue/Newport	342	43,416	7.8773
34	Mitsubishi	Galant Sigma	71	9,027	7.8653
35	Mazda	323	791	101,161	7.8192
36	Ford Motor Co.	Lincoln Continental	287	39,148	7.3312
37	Chrysler Corp.	Plymouth Sundance	629	87,132	7.2189
38	General Motors	Pontiac Sunbird	488	70,380	6.9338
39	Nissan	Maxima	434	64,928	6.6843
40	General Motors	Chevrolet Cavalier	1,813	278,279	6.5150
41	BMW	3	192	29,550	6.4975
42	General Motors	Oldsmobile Delta 88 Royale	941	145,555	6.4649
43	Ford Motor Co.	Ford Thunderbird	902	139,717	6.4559
44	Chrysler Corp.	Dodge Daytona	417	65,187	6.3970
45	AMC/Renault/Chrysler	Eagle Medallion	149	23,413	6.3640
46	Porsche	924	13	2,061	6.3076
47	General Motors	Buick Riviera	51	8,290	6.1520
48	Chrysler Corp.	Plymouth Caravelle	102	16,895	6.0373
49	General Motors	Chevrolet Impala/Caprice	798	132,963	6.0017
50	General Motors	Cadillac Allante	14	2,444	5.7283
51	General Motors	Pontiac 6000	502	88,270	5.6871
52	Ford Motor Co.	Mercury Cougar	648	113,972	5.6856
53	Mazda	RX-7	221	39,166	5.6426
54	General Motors	Oldsmobile Toronado	90	16,106	5.5880
55	Chrysler Corp.	Plymouth Colt/Colt Vista	252	45,141	5.5825
56	Porsche	944	33	5,931	5.5640
57	Chrysler Corp.	Chrysler New Yorker	394	70,914	5.5560
58	Nissan	Pulsar	234	42,355	5.5247
59	Nissan	200 SX	97	17,597	5.5123
60	General Motors	Buick LeSabre	672	122,415	5.4895
61	General Motors	Oldsmobile 98/Touring	393	73,647	5.3363
62	General Motors	Chevrolet Beretta/Corsica	2,804	526,011	5.3307
63	Chrysler Corp.	Dodge Colt/Colt Vista	269	50,716	5.3040
64	Ford Motor Co.	Ford Escort/EXP	2,148	405,313	5.2996

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (MFGR's) 1988	Theft rate (thefts/ product) (1988) (1,000's)
65	Nissan	Sentra	1,354	259,171	5.2243
66	Chrysler Corp.	Chrysler New Yorker Turbo	45	8,787	5.1212
67	Toyota	Cressida	59	11,795	5.0021
68	Mercedes-Benz	560SL	62	12,444	4.9823
69	General Motors	Oldsmobile Cutlass Supreme	556	112,333	4.9496
70	Ford Motor Co.	Mercury Tracer	451	91,702	4.9181
71	Ford Motor Co.	Lincoln Town Car	947	193,576	4.8921
72	General Motors	Cadillac Cimarron	31	6,377	4.8612
73	Chrysler Corp.	Chrysler LeBaron/Town & Country	128	26,346	4.8584
74	Toyota	Celica	338	69,626	4.8545
75	Chrysler Corp.	Dodge Lancer	45	9,282	4.8481
76	Ford Motor Co.	Lincoln Mark VII	174	36,319	4.7908
77	General Motors	Pontiac Parisienne/Safari S/W	26	5,470	4.7532
78	Chrysler Corp.	Dodge Dynasty	257	55,328	4.6450
79	Ford Motor Co.	Ford Tempo	1,239	267,401	4.6335
80	Ferrari	Mondial	1	216	4.6296
81	General Motors	Chevrolet Sprint	248	53,918	4.5996
82	Volkswagen	Golf/GTI	123	27,045	4.5480
83	Toyota	Corolla/Corolla Sport	988	218,280	4.5263
84	General Motors	Oldsmobile Cutlass Ciera	1,013	228,094	4.4412
85	Yugo	GY/GVX/GVL	166	37,592	4.4158
86	General Motors	Oldsmobile Cutlass Calais	455	103,111	4.4127
87	General Motors	Buick Electra	377	86,183	4.3744
88	Nissan	Stanza	171	39,370	4.3434
89	General Motors	Pontiac Grand Prix	341	78,541	4.3417
90	General Motors	Buick Skylark	220	52,494	4.1910
91	Subaru	XT	68	16,272	4.1790
92	Honda/Acura	Integra	217	52,340	4.1460
93	Toyota	Camry	904	219,155	4.1249
94	Chrysler Corp.	Dodge Aries	453	110,907	4.0845
95	General Motors	Buick Electra/LeSabre Estate Wagon	36	8,848	4.0687
96	Chrysler Corp.	LeBaron GTS	56	14,102	3.9711
97	Rolls-Royce/Bentley	Corniche/Continental/Mulsanne	2	504	3.9683
98	Ford Motor Co.	Mercury Topaz	315	79,844	3.9452
99	General Motors	Buick Skyhawk	107	27,803	3.8485
100	Ford Motor Co.	Mercury Sable	425	110,489	3.8465
101	General Motors	Chevrolet Celebrity	961	250,028	3.8436
102	General Motors	Oldsmobile Firenza	43	11,316	3.7999
103	Subaru	Justy	78	21,049	3.7056
104	Ford Motor Co.	Ford Festiva	357	98,290	3.6321
105	General Motors	Buick Century	377	105,717	3.5661
106	Alfa Romeo	Spider Veloce 2000	8	2,256	3.5461
107	Toyota	Tercel	398	112,327	3.5432
108	Mercedes-Benz	300SEL	18	5,112	3.5211
109	General Motors	Buick Regal	428	121,774	3.5147
110	Ford Motor Co.	Ford Taurus	1,263	361,038	3.4982
111	Daihatsu	Charade	47	13,522	3.4758
112	BMW	6	10	2,889	3.4614
113	Honda/Acura	Legend	281	81,826	3.4341
114	Mercedes-Benz	260E	21	6,188	3.3937
115	Mercedes-Benz	190D/E	52	15,414	3.3736
116	Austin Rover	Sterling	35	10,401	3.3651
117	BMW	7	72	21,484	3.3513
118	General Motors	Pontiac Grand AM	722	216,641	3.3327
119	Mercedes-Benz	300CE	9	2,731	3.2955
120	Mazda	929	92	28,749	3.2001
121	General Motors	Cadillac Eldorado	103	32,560	3.1634
122	General Motors	Pontiac Lemans	535	170,126	3.1447
123	Mercedes-Benz	300E	46	14,682	3.1331
124	Chrysler Corp.	Plymouth Reliant	390	124,744	3.1264
125	Mercedes-Benz	560SEC	5	1,623	3.0607
126	Lotus	Espirit	1	325	3.0769
127	Ford Motor Co.	Mercury XR4TI	19	6,271	3.0298
128	Mercedes-Benz	420SEL	24	7,960	3.0151
129	Honda	Accord	1,231	410,583	2.9982
130	Volkswagen	Fox	227	75,828	2.9936
131	Mercedes-Benz	560SEL	16	5,361	2.9845
132	General Motors	Oldsmobile Custom Cruiser Wagon	31	10,454	2.9654
133	Volvo	740/760/780	159	53,941	2.9477
134	Ford Motor Co.	Mercury Grand Marquis	318	109,375	2.9074
135	General Motors	Buick Reatta	13	4,479	2.9024
136	Subaru	Subaru	192	67,838	2.8303
137	General Motors	Chevrolet Nova	308	109,196	2.8206
138	Jaguar	XJ6	63	22,753	2.7689
139	Volkswagen	Quantum	8	2,970	2.6936
140	Suzuki	Forsa	12	4,587	2.6161
141	SAAB	900	97	37,171	2.6086
142	BMW	5	55	22,409	2.4544

	Manufacturer	Make/Model (Line)	Thefts 1988	Production (MFGR'S) 1988	Theft rate (thefts/ product) (1988) (1,000's)
143	Honda	Civic	544	225,907	2.4081
144	AMC/Renault/Chrysler	Eagle Premier	94	40,326	2.3310
145	SAAB	9000	33	14,765	2.2350
146	Mazda	626/MX-6	223	108,799	2.0497
147	Ford Motor Co.	Ford LTD/Crown Victoria	233	114,678	2.0318
148	Chrysler Corp.	Plymouth Horizon	119	61,051	1.9492
149	Chrysler Corp.	Dodge Omni	115	59,181	1.9432
150	Volvo	240 DL/GL	76	40,894	1.8585
151	Chrysler Corp.	Plymouth Gran Fury	21	11,422	1.8386
152	Ferrari	328	1	560	1.7857
153	Ford Motor Co.	Mercury Scorpio	28	16,067	1.7427
154	Mitsubishi	Precis	44	26,307	1.6726
155	Audi	80 & 90 Series	24	16,014	1.4987
156	Audi	5000s/Quattro	10	7,910	1.2642
157	Mitsubishi	Tredia	4	3,514	1.1383
158	Mercedes-Benz	300SE	4	3,600	1.1111
159	Chrysler Corp.	Dodge Diplomat	18	19,165	0.9392
160	Peugeot	505	6	8,128	0.7382
161	Mercedes-Benz	300TE	2	2,738	0.7305
162	Bertone	X-1/9	1	2,000	0.5000
163	Jaguar	XJ-S	2	5,882	0.3532
164	Ferrari	Testarossa	0	376	0.0000
165	Excalibur	Phaeton/Roadster	0	79	0.0000
166	Aston Martin	Lagonda	0	9	0.0000
167	Zimmer	Classic/Elegante/Cabriolet	0	170	0.0000
168	Rolls-Royce/Bentley	Camargue/Silver/Spirit/Silver/Spur	0	711	0.0000
169	Bitter GMBH	Bitter SC	0	82	0.0000
170	TVR	280i	0	225	0.000

[FR Doc. 90-10414 Filed 5-3-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection
Requirements Submitted to OMB for
Review

April 27, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0889.
Form Number: IRS Form 8275.
Type of Review: Revision.
Title: Disclosure Statement.
Description: Internal Revenue Code (IRC) section 6662 imposes penalties on taxpayers for the substantial understatement of income tax liability and for negligence or disregard of rules

and regulations. IRC section 6694 imposes similar penalties on tax return preparers. These penalties may be reduced or avoided if the taxpayer or preparer adequately discloses the relevant facts affecting the tax treatment of any item on the return, providing the items are not from a tax shelter.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Responses/Recordkeeping: 3,000,000.

Estimated Burden Hours Per

Respondent/Recordkeeper:

Recordkeeping: 3 hrs., 7 min.
Learning about the law or the form: 1 hr., 23 min.

Preparing and sending the form to IRS: 1 hr., 30 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 14,370,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports,
Management Officer.

[FR Doc. 90-10359 Filed 5-3-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection
Requirements Submitted to OMB for
Review

DATES: April 30, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0881.

Form Number: 8271.

Type of Review: Extension.

Title: Investor Reporting of Tax Shelter Registration Number.

Description: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their returns from a tax shelter required to be registered (under Internal Revenue Code 6111) must report the tax shelter registration number on that return. Form 8271 is used for this. We use the information to associate claimed benefits with the tax shelter

and to determine if any compliance actions are needed.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 297,500.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping 13 minutes

Learning about the law or the form 12 minutes

Preparing the form 4 minutes

Copying, assembling, and sending the form to IRS 14 minutes

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 214,200 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 90-10392 Filed 5-3-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee for Health Research Policy; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), VA (Department of Veterans Affairs) gives notice that a meeting of the Advisory Committee for Health Research Policy will be held at the Crystal Gateway Marriott Hotel, 1700 Jefferson-Davis Highway, Arlington, VA 22202 on June 11 and June 12, 1990, beginning at 8 a.m. each day. The purpose of this meeting is to continue the evaluation of VA's

Research and Development Program and to draft a report of findings and recommendations for the Secretary of Veterans Affairs.

The meeting will be open to the public and a brief period is set aside at the end of the meeting for public comment and questions. Those persons with extensive questions or statements must submit them in writing to VA official named below at least 3 days before the meeting.

Persons wishing additional information regarding the meeting or who wish to submit written statements may contact Dr. Prakash Grover, Chief, HSR&D Special Projects Office (641/152), VA Medical Center, Perry Point, MD Telephone (301) 642-2411 ext. 5448.

Dated: April 23, 1990.

By direction of the Secretary:

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-10384 Filed 5-3-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 87

Friday, May 4, 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 RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, May 9, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10488 Filed 5-2-90; 11:35 am]

BILLING CODE 6210-01-M

Corrections

Federal Register

Vol. 55, No. 87

Friday, May 4, 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.

COMMODITY FUTURES TRADING COMMISSION

The Chicago Board of Trade's Proposed Amendments to Rule 350.04 and Deletion of Rule 350.04A and The Chicago Mercantile Exchange's Proposed Policy Change and Amendments to Rules 527 and 531

Correction

In notice document 90-8839 appearing on page 14336, in the issue of Tuesday, April 17, 1990, make the following corrections:

1. On page 14336, the subject heading should read as set forth above.
2. On the same page, in the second column, in the last complete paragraph, in the third line, "of CME" should read "or FCM".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Indian Nations at Risk Task Force; Meeting

Correction

In notice document 90-9790 appearing on page 17805, in the issue of Friday, April 27, 1990, make the following correction:

On page 17805, in the second column, under **DATES AND TIMES:**, in the first line, insert "a.m." after "10".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0152]

Drug Export; Pseudoephedrine Hydrochloride Controlled Release Tablets (Capiets), 120 Mg

Correction

In notice document 90-9613 beginning on page 17501, in the issue of Wednesday, April 25, 1990 make the following correction:

On page 17502, in the first column, in the last complete paragraph, in the third

line, "(April 7, 1990)," should read "May 7, 1990,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13 and 14

[Docket No. 25690; Amdt. Nos. 13-20 and 14-1]

Rules of Practice for FAA Civil Penalty Actions

Correction

In rule document 90-9174 beginning on page 15110, in the issue of Friday, April 20, 1990, make the following corrections:

1. On page 15118, in the third column, in the seventh line, "FAA" should read "EAA".
2. On page 15121, in the third column, in the first complete paragraph, in the 12th line, "whether" should read "Whether".

§ 13.232 [Corrected]

3. On page 15131, in the second column, in § 13.232 (c), in the next to last line, "an" should read "on".

BILLING CODE 1505-01-D

federal register

**Friday
May 4, 1990**

Part II

Department of Education

**The 1991-92 Student Aid report; Notice
of Solicitation of Comments**

DEPARTMENT OF EDUCATION**Pell Grant Program; Student Aid Report (1991-92); Solicitation of Comments**

AGENCY: Department of Education.

ACTION: Notice of solicitation of comments on the 1991-92 Student Aid Report.

SUMMARY: The Secretary provides notice that the Department of Education is soliciting comments concerning the 1991-92 Student Aid Report. The Student Aid Report is a report issued by the Secretary to a student which contains the financial and other information reported by the student on his or her financial aid application. The Student Aid Report also shows the student's Pell Grant Index (PGI) (formerly known as the Student Aid Index) and the amount of his or her expected family contribution for the campus-based and Stafford Loan programs.

DATES: Comments must be received on or before June 18, 1990.

ADDRESSES: All comments concerning this notice should be addressed to Mr.

Gary Crayton, Chief, Pell Grant Branch, Division of Program Operations and Systems, U.S. Department of Education, P.O. Box 23791, Washington, DC 20026-0791.

FOR FURTHER INFORMATION CONTACT: Ms. Harriett McCombs, Management Analyst, Pell Grant Branch, Division of Program Operations and Systems, U.S. Department of Education, P.O. Box 23791, Washington, DC 20026-0791. Telephone (202) 732-3724.

SUPPLEMENTARY INFORMATION: The Secretary is requesting public comment concerning the 1991-92 Student Aid Report. The Secretary is especially interested in comments concerning the following:

1. All aspects of the design of the form, including overall appearance, type sizes, placement of certification statements, the sequence and arrangement of comments and recommendations for additional comments.
2. The clarity of the instructions.
3. Clarity and ease of use of the "Information Request Form."

4. Readability of the "Office Use Only" box and recommendations for inclusion of additional items.

5. The burden on the applicant population in utilizing this form and recommendations for keeping this burden to a minimum.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed 1991-92 Student Aid Report on all of the above or other issues.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 4653, ROB-3, 7th and D streets, SW., Washington, DC 20202-5443, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week, except Federal holidays.

Dated: April 27, 1990.

Leonard L. Haynes III,
Assistant Secretary for Postsecondary Education.

[FR Doc. 90-10356 Filed 5-3-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
May 4, 1990

Part III

Federal Trade Commission

16 CFR Part 600

**Statement of General Policy or
Interpretation; Commentary on the Fair
Credit Reporting Act**

FEDERAL TRADE COMMISSION

16 CFR Part 600

Statement of General Policy or Interpretation; Commentary on the Fair Credit Reporting Act

AGENCY: Federal Trade Commission.

ACTION: Final rule; publication of commentary.

SUMMARY: The Commission is issuing its Commentary on the Fair Credit Reporting Act that will supersede all previously issued Commission and staff interpretations of the Act. The purpose of the Commentary is to clarify and codify the most significant of these interpretations. This Commentary is on the law as it currently exists and does not address issues or policies raised by pending legislation.

EFFECTIVE DATE: May 4, 1990.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David G. Grimes, Jr., Attorney, Division of Credit Practices, Federal Trade Commission, Washington, DC 20580, (202) 326-3171.

SUPPLEMENTARY INFORMATION: On August 8, 1988, the Federal Trade Commission ("FTC" or "Commission") published its proposed Commentary on the Fair Credit Reporting Act ("FCRA") in the Federal Register (53 FR 29696; August 8, 1988). The notice accompanying the Commentary outlined the basic purposes and provisions of the FCRA, and referred to the eight formal interpretations of the FCRA which had been issued by the Commission (16 CFR 600.1-600.8) and hundreds of informal opinion letters by the staff of the Commission ("staff") that responded to consumer and industry inquiries by giving the staff's interpretations on the questions presented. In addition, the notice set forth (1) the Commission's rationale for issuing the Commentary and (2) a list of the principal areas where it varied in appreciable measure from the Commission's interpretations or from informal opinions previously offered by the staff. The notice briefly addressed the Commission's role in enforcing the FCRA and its interest in improving the present method of providing advice to the public. It explained that the Commission viewed the publication of the Commentary as an opportunity to provide a more comprehensive vehicle for opinions concerning the FCRA, and to revise previous staff advice that the Commission had come to believe was inconsistent or inaccurate. Both the

Federal Register notice dated August 8, 1988, and the proposed Commentary itself, specified that the Commentary does not have the force of a statutory provision or trade regulation rule, and that it is not a binding ruling of any type.

The notice in the Federal Register dated August 8, 1988, stated that the Commission would accept public comments on the proposed Commentary to aid in preparation of the final product.

The comment period closed on October 7, 1988. The Commission received over one hundred responses from providers of consumer reports (credit bureaus), users of consumer reports (creditors and insurers), consumers and their representatives, and other interested parties. Although the Commission stated that it was requesting comments until October 7, 1988, all comments received were taken into account in preparing the Commentary, even those received after that date.

This notice highlights the principal areas in which the Commission revised the FCRA Commentary based on public comments received in response to the Commission's publication of the proposed Commentary in August 1988, or decided not to do so. In this notice, the word "comment" refers to an opinion set forth in the Commentary, "public commenter" refers to a party that submitted views on the proposed Commentary following its publication in the Federal Register, and "public comments" refers to those views.

I. Principal Revisions to Commentary Based on Public Comments

The Commission found the public comments helpful in preparing the final version of the Commentary, although not all the proposals were adopted. The Commission adopted changes suggested by the public comments, where it appeared that they resulted in an appreciable improvement in the Commentary. The majority of the revisions the Commission made in the Commentary involved only minor changes (adding a few words or a phrase or making some editorial change), and were designed to clarify points or to avoid possible unintended inferences. However, a number of substantive changes were made based on public comments. This section highlights the most significant of the revisions that were made based on public comments.

1. Reports Consisting Solely of Name and Address (Sections 603(d), 608)

Several public commenters noted that comment 4F to section 603(d) could be construed to mean that a report limited

to a consumer's name and address can never constitute a "consumer report." If name and address information in a report from a consumer reporting agency is furnished or used because it bears on any of the seven factors listed in section 603(d) (e.g., credit worthiness, character, general reputation, personal characteristics or mode of living) the Commission believes that report is a "consumer report." The Commission has clarified comment 4F to reflect this view and, consistent with this view, has deleted comment 1 to section 608.

2. Public Record Information (Sections 603(d) and (f))

Several public commenters argued vigorously that comment 3 to section 603(f), combined with comment 4E to section 603(d), would have the effect of banning the publication of public record information, in bulletins or newsletters or otherwise,¹ by merchant associations, legal news services, newspapers and other parties, because the publisher would be considered a "consumer reporting agency" making an unauthorized series of "consumer reports."² They contended that public record publications are marketed and used for their business news and information value, and that the possibility that the publication might be used by some subscribers in connection with credit, insurance, employment, or other consumer purposes, was remote.

The Commission has never intended to restrict the circulation of newsworthy public record information by newspapers and other publishers, simply because some of that information might be used by an occasional subscriber for purposes described in sections 603(d) and 604(3) of the FCRA. On the other hand, the Commission has no doubt that a report on an individual by a credit bureau to aid in determining the individual's eligibility for credit (or other such purposes) is a consumer report even if it contains only public record information. Therefore, the Commission has (1) revised comment 4E to section 603(d) to make it clear that a distinct report of public information about an individual by a consumer reporting agency is a "consumer report," and (2) deleted comment 3 to section

¹ The public comments indicate that these publications include lists of items such as divorce, bankruptcy filings, mortgages, real estate sales, filed security interests, judgments, civil suits, probates, various liens, articles of incorporation and dissolution, new electronic hook-ups, and births.

² If that were the case, section 604 would effectively prohibit their publication, because the publication subscribers would have no "permissible purpose" for a report on all the individuals on whom information was published.

603(f) to avoid any inference that a publisher of public record information becomes a "consumer reporting agency" because of its possible use for consumer purposes by a few subscribers. The Commission further notes that, if a consumer were denied credit by a subscriber to such a publication based on information therein, section 615(b) would require the creditor to disclose to the consumer his or her right to learn the nature of the information that led to the denial, because that section applies to information obtained from sources other than consumer reporting agencies.

3. Creditor as "Consumer Reporting Agency" (Section 603(f))

Some public commenters asked that the Commentary reflect written advice provided by the staff that a creditor does not become a "consumer reporting agency" when it either (1) provides consumer application information to a credit bureau for verification as part of its credit evaluation process that includes subsequent receipt of a report from the bureau, or (2) discloses the report to the consumer who is the subject of the report. The Commission concurs, and has therefore added two new comments (3 and 12) to section 603(f) to include those views.

4. Reports Relating to Governmental Benefits (Section 604(3)(D))

Some public commenters suggested that the Commentary should reflect written advice the staff has provided to the effect that (1) the benefit that gives rise to a "permissible purpose" under this section may result from a rule or regulation, as well as a statute, and (2) a professional body such as a board of bar examiners would have such a purpose. The Commission concurs, and has amended comment 1 to incorporate those items.

5. Reports Furnished for Commercial Transactions (Section 604(3)(E))

Several public commenters have noted that, although commercial transactions are not covered by the Act, as the Commentary indicates in comment 5C to section 603(d) and elsewhere, information in consumer report files that has been "collected in whole or in part" for consumer reporting purposes is a "consumer report," regardless of the purpose for which it is furnished. Accordingly, the dissemination of such information by a consumer reporting agency is covered by the Act. To dispel confusion on this point, the Commission has deleted the last sentence in comment 2 under section 604(3)(E).

6. Accuracy (Section 607)

Some public commenters expressed the fear that comment 3C to section 607 required total perfection in (1) acquisition and transmission of computerized information and (2) avoidance of security breaches in regard to such data. The Commission agrees that section 607(b) is not violated because of isolated errors in the recording or transmission of information, or an unforeseeable alteration of data by an unauthorized party, because that provision requires consumer reporting agencies only to employ "reasonable procedures to assure maximum possible accuracy" (emphasis added). Therefore, it has revised the wording of the comment to specify that "reasonable" (not perfect) procedures are required to "minimize" (not eliminate) such occurrences.

Other public commenters asserted that the Commentary should reflect staff written advice that accounts discharged in bankruptcy (as well as the bankruptcy itself), and a list of recipients of prior reports on the consumer (usually called "inquiries"), may be included in consumer reports. The Commission agrees, and has revised comment 6 to include those points.

7. Disclosure (Sections 609-10)

Several public commenters asked that the Commentary reflect written advice by the staff to the effect that (1) a consumer reporting agency may respond to a demand for disclosure from a third party under the consumer's written power of attorney by making the disclosure directly to the consumer, rather than to the third party, (2) a point score used to evaluate a consumer's credit history (and the system that provided the score) need not be provided as part of a file disclosure to the consumer, (3) a consumer reporting agency that furnishes a report directly to a user at the request of another such agency must disclose the user (rather than the intermediary agency) as the report recipient, and (4) a consumer reporting agency may make in-person disclosures to consumers who have made appointments ahead of others who have not. The Commission agrees, and has revised comments 4, 7 and 10 to section 609, and comment 1 to section 610 (respectively) to reflect those points.

One public commenter suggested that the Commentary should specify more clearly that a consumer reporting agency may not use an application form to inhibit a consumer from seeking a disclosure of his or her file. The Commission has edited comment 3 to section 609 to clarify this point.

8. Reinvestigation (Section 611)

Some public commenters questioned the second sentence of comment 10, which stated that a "yardstick" of what was a "reasonable time" for an agency to investigate a consumer's dispute was the time it would take to recheck the matter if it were raised by one of the agency's user/customers; one such public commenter pointed out, among other things, that in some cases the reinvestigation could be made instantaneously by electronic means for the user. Another public commenter suggested that thirty days (the period that prevailing industry policy recognizes as the time it should normally take to reinvestigate disputes) should be set as the standard. The Commission agrees, and therefore has revised this comment to delete the proposed "yardstick" and substitute instead a comment that thirty days is the normal period for reinvestigation; however, it recognizes that the duration of "reasonable time" may vary in any given circumstance, depending on the simplicity or complexity of the dispute presented to the consumer reporting agency by the consumer.

Other public commenters asked that the Commentary (1) reflect written staff advice to the effect that a credit bureau may take into account, in considering whether it has reason to believe a dispute to be "frivolous or irrelevant," the fact that disputes are received in a similar format indicating that a third party such as a "credit repair clinic" is counselling consumers to submit disputes of items known to be accurate, and (2) make it clear that a consumer reporting agency is not required to conduct a second investigation of a particular item, unless the consumer submits new proof that the item is inaccurate or incomplete, or alleges changed circumstances. The Commission agrees, and has made revisions to comment 11 to so indicate.

II. Significant Public Comments not Adopted

There were several areas in which public comments suggested changes in the Commentary that were not adopted. This section highlights the most significant of those proposals, and sets forth the Commission's principal reasons for maintaining its position.

1. Motor Vehicle Reports (Section 603(d, f))

Several public commenters disagreed with the Commentary's retention of the views expressed in the Commission's current interpretation (16 CFR 600.4) that a motor vehicle report can be a

"consumer report" (comment 4C to section 603(d)) and that a State Department of Motor Vehicles that sells such reports to insurers for underwriting purposes can be a "consumer reporting agency" (comment 10 to section 603(f)). They generally argued that such reports were very useful to automobile insurers in determining whom to insure and what premiums to charge. No public commenter set forth any problems that had resulted from the current interpretation during the years it has been in effect.

Some public commenters stated that the purpose of the motor vehicle reports (and the departments that issue them) is law enforcement. In effect, this was a legal argument that these reports therefore were not "used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for * * * insurance" (section 603(d)) and that the Department was not "assembling * * * information on consumers for the purpose of furnishing consumer reports to third parties" (section 603(f)) (emphasis added). Such an argument would insert the word "principal" before "purpose" in each of the applicable definitions in the FCRA, effectively amending the statute. Furthermore, it wholly ignores the additional use to which such reports undeniably are put. Such an interpretation would be clearly inconsistent with the views expressed elsewhere in the Commentary that a party can become a consumer reporting agency when it behaves like such an agency, even if its primary purpose, like the motor vehicle departments that fulfill a law enforcement function but also sell motor vehicle reports to insurers and are the subject of this interpretation, is not the making of consumer reports.³

The Commission sees no reason, based on its review of the public comments, to revise its longstanding view that a Department that regularly sells motor vehicle reports to insurers containing information such as driving arrests or convictions, is covered by the FCRA. As pointed out in its text, the current interpretation is not intended to interfere with the law enforcement activities of state Motor Vehicle Departments.⁴ Since the Interpretation

³ See, e.g., comment 7 to section 603(f), which states that creditors and debt collectors (whose primary purposes are granting credit and collecting debts, respectively—not making consumer reports) can become "consumer reporting agencies" if they furnish information on consumers beyond their own transaction or experiences with them.

⁴ However, that interpretation notes that the FCRA would require that an insurer that takes

(16 CFR 600.4) has been in effect for some 16 years and has apparently not caused any appreciable dislocation, and no persuasive new arguments have been presented for revising it, the Commission has retained it in the Commentary.

2. Insurance Claims (Sections 603(d), 604(3)(C))

Some public commenters expressed disagreement with items in the Commentary stating that an insurer would not have a permissible purpose to obtain a consumer report in order to investigate an insurance claim (comment 2 to section 604(3)(C)) and with some portions of the comments that dealt with the applicability or inapplicability of the FCRA to claims reports (reports by investigative services retained by insurers in connection with claims). The public commenters agreed with the Commission's basic view that a claims report is generally not a "consumer report" and therefore not covered by the FCRA (comment 6C to section 603(d)) but disagreed with indications elsewhere (principally comment 5C to section 603(d)) that it might be covered in one case (if a consumer report was included by the investigator as part of the claims report), essentially asserting that no claims report was ever covered.⁵ The objections to the statement that no permissible purpose existed for an insurer to obtain a consumer report from a consumer reporting agency in connection with a claim were based primarily on policy grounds—that it would be useful for an insurer to know if the insurance claimant was in financial difficulty and therefore prone to submit a fraudulent claim.

The Commission has retained the essence of these comments. As to the "permissible purpose" issue, it should be emphasized that the view that insurance claims do not provide such a purpose is

adverse action against consumer applicants based on such a report must tell such consumers that the motor vehicle department is the source of the report (section 615), and that the Department must establish procedures to (1) make disclosure of its records to the consumer required by sections 609-10, (2) reinvestigate consumer disputes under section 611, (3) avoid reporting obsolete information as set forth in section 605, and (4) maintain maximum possible accuracy of information in the reports (section 607).

⁵ One public comment erroneously construed the Commentary as concerning itself with an investigation undertaken by an insurer's internal investigators. A phrase was added to comment 6C to section 603(d) ("Insurance Claims Reports") to make it clear that the Commentary is only referring to reports provided by independent claims investigation services in this context.

not only analytically compelling,⁶ but also is a critical basis for the conclusion (with which the public commenters agreed) that claims reports are not generally to be considered consumer reports.⁷ As to its general treatment of claims reports, it should again be emphasized, as it was in the Federal Register notice accompanying the proposed Commentary,⁸ that the Commentary reduces the minimal FCRA coverage of claims reports asserted by previous staff opinions on the subject.⁹

3. Subpoena as Permissible Purpose (Section 604(1))

Some public commenters stated that a permissible purpose should exist if state or local law defines a subpoena as an "order of court" even if it is not signed by a judge, as comment 1 states it must be.

The Commission has consistently maintained the view, articulated in briefs it filed in the leading case on the issue, *In re Gren*, 633 F.2d 825 (9th Cir. 1980), among others, that a subpoena is an "order of a court" for purposes of providing a permissible purpose under the FCRA only if it was signed by a judge (or other impartial judicial official).¹⁰ The Commission continues to

⁶ Section 604(3)(C), which clearly provides a permissible purpose only for "underwriting of insurance" (emphasis added), could easily have been drafted to permit reports for insurance claims purposes if Congress so intended. In this posture, it would be unreasonable to read section 604(3)(E) to provide such a purpose.

⁷ Since the definition of "consumer report" in section 603(d) includes reports for "purposes authorized under 604," the view that an insurance claim provides a permissible purpose may lead to a conclusion that claims reports are consumer reports. This would be most undesirable from a policy viewpoint, because the user of claims reports would be required by section 606(a) to notify the insurance claimant that an investigative consumer report was being prepared, which would put the consumer on guard and possibly destroy the ability of the investigator to provide a useful claims report. A key factor in the principal cases brought against parties providing claims investigation services, which hold that claims reports are not "consumer reports" under section 603(d), has been the lack of a permissible purpose for an insurer to obtain a consumer report for claims purposes under section 604(3) (C) or (E). *Hovater v. Equifax, Inc.*, 823 F.2d 413, 418-19 (11th Cir.), cert. denied, ___ U.S. ___, 108 S. Ct. 490 (1987); *Houghton v. New Jersey Manufacturers Ins. Co.*, 795 F.2d 1144, 1149-50 (3rd Cir. 1986); *Cochran v. Metropolitan Life Ins. Co.*, 472 F. Supp. 827, 831 (N.D. Ga. 1979).

⁸ This was the first issue discussed under the heading "Principal Changes From Prior Views" in that notice. See 53 FR at 29697.

⁹ The only time a claims report would generally be a consumer report is a situation where the investigator included a consumer report (or information from it) in the claims report.

¹⁰ In the *Gren* case, the court supported the refusal by a major credit bureau to provide a consumer report in response to a grand jury subpoena. For a sampling of varying lower court

believe that the privacy protection contemplated by section 604 of the FCRA precludes credit bureaus from issuing reports on consumers based on a subpoena issued *pro forma* by the clerk of a court, regardless of how state or local law might define such a document. In addition, the Commission believes that the needs of consumers, law enforcement officials,¹¹ and most credit bureaus,¹² have been met by this result. Therefore, this comment has been retained.

4. Prescreening (Section 604(3)(A))

The Commission's prescreening interpretation occasioned far more detailed public comments than any other issue.¹³ Credit bureaus that provide a "prescreening" service, and creditors that use the service (which produces a list of consumers to be targeted as customers by the user), objected to the requirement in comment 6 and in the current Commission interpretation (16 CFR 600.5) that consumers who survived the "screen" (and thus were included in the list provided by the credit bureau) receive an offer of credit from the user of the service. Those public commenters made strong practical arguments that the prescreening process would be more helpful if creditors were permitted to mail consumers an application form, and in return get income and employment information (and perhaps order a full consumer report), before deciding whether or not to grant credit. Creditors argued that the prescreening process was a very efficient method of targeting would-be customers, but was not sufficiently precise to enable them to make firm offers of credit to all

consumers who survive the screen. In addition, they contended that strict compliance would lead to unwieldy procedures such as opening an account with a low line of credit, and closing the account quickly where circumstances (e.g., early experience on the account, or a full consumer report) indicated. Some consumer representatives, on the other hand, contended that even the current (and proposed Commentary) interpretation was an unauthorized abridgment of consumers' privacy rights that section 604 of the FCRA was enacted to protect, because the consumer's file was thereby accessed by creditors with whom the consumer had no prior contact whatsoever.¹⁴

The Commission continues to believe that the current interpretation is in accord with the spirit of the FCRA because the modest invasion of the consumer's privacy that occurs when his or her credit record is reviewed in the prescreening process is offset by a substantial potential gain—an actual offer of credit.¹⁵ However, it also believes that a liberalized interpretation that would permit the creditor to send only promotional material to the "survivors" of the prescreen would not be justified because the consumers would not be receiving the same clear benefit in exchange for the creditor's use of their credit histories in the prescreening process. In terms of section 604(3)(A), the presence of an intent by the user of the prescreening service to grant credit provides a sufficient nexus between creditor and consumer to meet the statutory requirement that the creditor "intends to use the information in connection with a credit transaction * * * involving extension of credit to the consumer," whereas an intent by the creditor to send promotional material does not. Although the public comments articulately set forth the marketplace utility of expanding the prescreening

process, they provide no convincing legal rationale to support such a result. Therefore, the Commission has retained the essence of comment 6 on this topic.¹⁶

Some public commenters also suggested that prescreened lists are not consumer reports if they are furnished solely to third parties (e.g., mailing services) rather than directly to the customers that ordered them. Comment 6 has been revised to reflect the Commission's view that this procedure is not a means by which a consumer reporting agency can avoid application of the FCRA to such lists. Comment 6 has also been amended to reflect that a prescreened list is subject to the FCRA, regardless of the medium through which the client that ordered it solicits consumers.

5. Measuring the "7-Year" Period (Section 605(a)(4))

Public commenters made disparate suggestions for changing the positions espoused in the Commentary on this provision. One consumer commenter would have started the "placement for collection" time when the creditor first sent a "reminder" past-due notice (as opposed to comment 1, which opines that it starts when serious collection efforts are started or dunning notices are sent), whereas one creditor commenter would have changed this time to the date of assignment to an outside collection agency. Some consumer commenters disputed that the date of "charge off" or "placement for collection" should be used at all, since they were beyond the control of the consumer; one such commenter asserted that the first of the two dates should control for accounts that are both placed for collection and charged to profit and loss, rather than each event having its own 7-year period.

After considering all the suggestions made by industry and consumer public commenters, the Commission has decided to retain its comments on this provision concerning what dates should be used to start measuring the 7-year period for charge-off (date the account is written off) and collection (date the collection effort begins) accounts. The Commission believes that its proposals

opinions on the issue, compare *United States v. Retail Men's Credit Ass'n*, 501 F. Supp. 21 (M.D. Fla. 1980) with *In Re Grand Jury Subpoena Duces Tecum*, 498 F. Supp. 1174 (N.D. Ga. 1980), and various cases cited in these decisions.

¹¹ The Department of Justice revised its procedure in 1984, based on the *Gren* ruling in support of the Commission position, to seek consumer reports under section 604(1) only through actual court orders, rather than through grand jury subpoenas.

¹² The principal consumer reporting industry trade association, in its submission on the Commentary, did not raise the concerns of those of its members who disputed the Commission's interpretation.

¹³ This issue was featured as one of three issues upon which the Commission especially solicited public views in the questions posed in its *Federal Register* notice under the heading "Opportunity for Public Comment" (questions 5 through 7). See 53 FR at 29698. The response to the "prescreening" issue was an enormous volume of varying comments, whereas the other two issues (notice to consumers by users of investigative consumer reports; certification of permissible purposes to consumer reporting agencies by users of consumer reports) drew only *pro forma* responses from relatively few public commenters.

¹⁴ The Commission realizes, as it did when it issued the original interpretation in 1973, that the usual trigger for a "permissible purpose" under section 604(3)(A)—an application by the consumer for credit—does not exist here. However, the Commission continues to believe there is relatively insignificant harm to the consumer because the privacy infringement is minimal in prescreening, compared to that which occurs when a creditor obtains a full consumer report on a credit applicant. The consumer's credit history is not reviewed by the creditor; rather, his or her name is simply included (or not) on the list provided to the creditor.

¹⁵ Of course, there may be rare situations in which a changed circumstance will permit a creditor to omit a credit offer to an isolated consumer on the final list without negating its underlying intent to offer such credit when it used the prescreening service. For instance, the consumer's address may change in such a way as to make the credit extension obviously inappropriate (i.e., new address may indicate the consumer has moved from the creditor's service area, or even been imprisoned).

¹⁶ One sentence in the interpretation was modified in response to some of the public comments on this issue, to make it clear that (1) a third party providing demographic or similar services in conjunction with the credit review provided by the consumer reporting agency in the prescreening process could be selected by either the creditor client or the consumer reporting agency, and (2) that such non-credit functions need not technically be "demographic" in nature.

represent the best common sense approach available to calculate that period, in a situation where the section provides no precise dates.

6. Accuracy (Section 607)

Some public commenters questioned the use of examples in comment 3 on this provision, expressing the fear that the example would be taken either as a *per se* violation or as the only way to comply with section 607(b). The Commission has retained the examples, because it believes they will assist the public to understand some areas in which violations may occur and some methods of compliance. However, the Commission certainly does not intend that, where the Commentary provides an example of a method of compliance with the FCRA, it should always be considered that the Commission regards it as the only permissible method for compliance.

7. Disclosure by Users of Consumer Reports (Section 615)

Some public commenters disagreed with the position stated in comment 12 that the "section 615" notice from a report user to a consumer must advise the consumer of the consumer reporting agency's street address, not just a post office box address. The commenters understood that the purpose of the comment was to give the consumer the option (at least implied in sections 609-10) of receiving an in-person disclosure of his or her file. They suggested variously that an "800" toll-free phone number might be provided for additional information, that they might not always know the street address, and that a specialized office to handle disclosure and disputes might be the most efficient address to provide to consumers.

The Commission has retained the comment as written. Nothing in the comment precludes a user from including a post office address and a relevant street address in the "section 615" notice, or from providing a specialized office of the consumer reporting agency as the address where inquiries (including in-person visits) can be made.

8. Pre-emption of State Law (Section 622)

Some public commenters disputed the Commission's position that a state law is pre-empted by the FCRA only when compliance with it would result in a violation of the FCRA. One such commenter argued vigorously that the Commission should adopt a less precise test, such as whether a state law frustrates the effectiveness or purpose of the FCRA or denies a right or benefit

conferred by the FCRA, citing *Retail Credit Co. v. Dade County*, 393 F. Supp. 577, 581 (S.D. Fla. 1975).

The Commission has decided to maintain its position. It is based on an unequivocal statement in the principal report in the FCRA's legislative history by the Senate Committee on Banking and Currency that, under the pre-emption provision, "no State law would be preempted unless compliance would involve a violation of Federal law." S. Rep. 91-517, 91st Cong., 1st Sess. 8 (November 5, 1969). In light of the clear statement of Congressional intent provided by this important source, written opinions by high level FTC staff have consistently declined to adopt the *Retail Credit* opinion that either ignored, or was unaware of, the critical Senate Report. The Commission believes the Commentary should continue to reflect Congressional intent concerning pre-emption of state laws, as set forth succinctly in the quoted report.

9. Miscellaneous Requests for Added Comments

Some public commenters made suggestions that the Commission establish *new* principles in the Commentary, or insert an item to validate the commenter's own procedures. Although not all of the proposals were clearly without merit, the Commission believes it is unwise to add major new sections to the final version of the Commentary to address issues that have not been the subject of Commission interpretations or staff correspondence. As indicated in the Introduction to the Commentary (item 4), the staff will continue to respond to requests for informal opinions, so any public commenter concerned about such an issue can (1) seek the staff's views and (2) be assured that such issues will be considered, when appropriate, for inclusion when the Commission first updates the Commentary.

III. Paperwork Reduction Act

Because the Commentary may involve the "collection of information" as defined in 5 CFR 1320.7(c), it was submitted to OMB for review under the Paperwork Reduction Act. On September 23, 1988, OMB approved that submission, assigning control No. 3084-0091 to the Commentary for use through August 31, 1991.

List of Subjects in 16 CFR Part 600

Credit, Trade practices.

Pursuant to 15 U.S.C. 1681s and 16 CFR 1.73, the Commission hereby revises 16 CFR part 600 to read as follows:

PART 600—STATEMENTS OF GENERAL POLICY OR INTERPRETATIONS

Sec.

600.1 Authority and purpose.

600.2 Legal effect.

Appendix—Commentary on the Fair Credit Reporting Act.

Authority: 15 U.S.C. 1681s and 16 CFR 1.73.

§ 600.1 Authority and purpose.

(a) *Authority:* This part is issued by the Commission pursuant to the provisions of the Fair Credit Reporting Act, Pub. L. 91-508, approved October 26, 1970, 84 Stat. 1127-36 (15 U.S.C. 1681 *et seq.*).

(b) *Purpose.* The purpose of this part is to clarify and consolidate statements of general policy or interpretations in a commentary in the Appendix to this part. The Commentary will serve as guidance to consumer reporting agencies, their customers, and consumer representatives. The Fair Credit Reporting Act requires that the manner in which consumer reporting agencies provide information be fair and equitable to the consumer with regard to the confidentiality, accuracy, and proper use of such information. The Commentary will enable interested parties to resolve their questions more easily, present a more comprehensive treatment of interpretations and facilitate compliance with the Fair Credit Reporting Act in accordance with Congressional intent.

§ 600.2 Legal effect.

(a) The interpretations in the Commentary are not trade regulation rules or regulations, and, as provided in § 1.73 of the Commission's rules, they do not have the force or effect of statutory provisions.

(b) The regulations of the Commission relating to the administration of the Fair Credit Reporting Act are found in subpart H of 16 CFR part 1 (Sections 1.71-1.73).

Appendix—Commentary on the Fair Credit Reporting Act

Introduction

1. *Official status.* This Commentary contains interpretations of the Federal Trade Commission (Commission) of the Fair Credit Reporting Act (FCRA). It is a guideline intended to clarify how the Commission will construe the FCRA in light of Congressional intent as reflected in the statute and its legislative history. The Commentary does not have the force or effect of regulations or statutory provisions, and its contents may be

revised and updated as the Commission considers necessary or appropriate.

2. *Status of previous interpretations.* The Commentary primarily addresses issues discussed in the Commission's earlier formal interpretations of the FCRA (16 CFR 600.1-600.8), which are hereby superseded, in the staff's manual entitled "Compliance With the Fair Credit Reporting Act" (the current edition of which was published in May 1973, and revised in January 1977 and March 1979), and in informal staff opinion letters responding to public requests for interpretations, and it also reflects the results of the Commission's FCRA enforcement program. It is intended to synthesize the Commission's views and give clear advice on important issues. The Commentary sets forth some interpretations that differ from those previously expressed by the Commission or its staff, and is intended to supersede all prior formal Commission interpretations, informal staff opinion letters, and the staff manual cited above.

3. *Statutory references.* Reference to several different provisions of the FCRA is frequently required in order to make a complete analysis of an issue. For various sections and subsections of the FCRA, the Commentary discusses the most important and common overlapping references under the heading "Relation to other (sub)sections."

4. *Issuance of staff interpretations.* The Commission will revise and update the Commentary as it deems necessary, based on the staff's experience in responding to public inquiries about, and enforcing, the FCRA. The Commission welcomes input from interested industry and consumer groups and other public parties on the Commentary and on issues discussed in it. Staff will continue to respond to requests for informal staff interpretations. In proposing revisions of the Commentary, staff will consider and, where appropriate, recommend that the Commentary incorporate issues raised in correspondence and other public contacts, as well as in connection with the Commission's enforcement efforts. Therefore, a party may raise an issue for inclusion in future editions of the Commentary without making any formal submission or request to that effect. However, requests for formal Commission interpretations of the FCRA may also still be made pursuant to the procedures set forth in the Commission's Rules (16 CFR 1.73).

5. *Commentary citations to FCRA.* The Commentary should be used in conjunction with the text of the statute. In some cases, the Commentary includes

an abbreviated description of the statute, rather than the full text, as a preamble to discussion of issues pertaining to various sections and subsections. These summary statements of the law should not be used as a substitute for the statutory text.

Section 601—Short Title

"This title may be cited as the Fair Credit Reporting Act."

The Fair Credit Reporting Act (FCRA) is title VI of the Consumer Credit Protection Act, which also includes other Federal statutes relating to consumer credit, such as the Truth in Lending Act (title I), the Equal Credit Opportunity Act (Title VII), and the Fair Debt Collection Practices Act (title VIII).

Section 602—Findings and Purpose

Section 602 recites the Congressional findings regarding the significant role of consumer reporting agencies in the nation's financial system, and states that the basic purpose of the FCRA is to require consumer reporting agencies to adopt reasonable procedures for providing information to credit grantors, insurers, employers and others in a manner that is fair and equitable to the consumer with regard to confidentiality, accuracy, and the proper use of such information.

Section 603—Definitions and Rules of Construction

Section 603(a) states that "definitions and rules of construction set forth in this section are applicable for the purposes of this title."

Section 603(b) defines "person" to mean "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity."

1. Relation to Other Sections

Certain "persons" must comply with the Act. The term "consumer reporting agency" is defined in section 603(f) to include certain "persons." Section 619 subjects any "person" who knowingly and willfully obtains information from a consumer reporting agency on a consumer under false pretenses to criminal sanctions. Requirements relating to report users apply to "persons." Section 606 imposes disclosure obligations on "persons" who obtain investigative reports or cause them to be prepared. Section 615(c) uses the term "person" to denote those subject to disclosure obligations under sections 615(a) and 615(b).

2. Examples

The term "person" includes universities, creditors, collection agencies, insurance companies, private investigators, and employers.

Section 603(c) defines the term "consumer" to mean "an individual."

1. Relation to Other Sections

The term "consumer" denotes an individual entitled to the Act's protections. Consumer reports, as defined in section 603(d), are reports about consumers. A "consumer" is entitled to obtain disclosures under section 609 from consumer reporting agencies and to take certain steps that require such agencies to follow procedures in section 611, concerning disputes about the completeness or accuracy of items of information in the consumer's file. Disclosures required under section 606 by one procuring an investigative report must be made to the "consumer" on whom the report is sought. Notifications required by section 615 must be provided to "consumers." A "consumer" is the party entitled to sue for willful noncompliance (section 616) or negligent noncompliance (section 617) with the Act's requirements.

2. General

The definition includes only a natural person. It does not include artificial entities (e.g., partnerships, corporations, trusts, estates, cooperatives, associations) or entities created by statute (e.g., governments, governmental subdivisions or agencies).

Section 603(d) defines "consumer report" to mean "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under Section 604" (with three specific exclusions).

1. Relation to "Consumer Reporting Agency"

To be a "consumer report," the information must be furnished by a "consumer reporting agency" as that term is defined in section 603(f). Conversely, the term "consumer reporting agency" is restricted to persons that regularly engage in

assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing "consumer reports" to third parties. In other words, the terms "consumer reporting agency" in section 603(f) and "consumer report" in section 603(d) are mutually dependent and must therefore be construed together. For example, information is not a "consumer report" if the person furnishing the information is clearly not a "consumer reporting agency" (e.g., if the person furnishing the information does not regularly furnish such information for monetary fees or on a cooperative nonprofit basis).

2. Relation to the Applicability of the Act

If a report is not a "consumer report," then the Act does not usually apply to it.¹ For example, because a commercial credit report is not a report on a consumer, it is not a "consumer report". Therefore, the user need not notify the subject of the name and address of the credit bureau when taking adverse action, and the provider need not omit "obsolete" information, as would be required if the FCRA applied.

3. Report Concerning a "Consumer's" Attributes and History

A. General. A "consumer report" is a report on a "consumer" to be used for certain purposes involving that "consumer."

B. Artificial entities. Reports about corporations, associations, and other collective entities are not consumer reports, and the Act does not apply to them.

C. Reports on businesses for business purposes. Reports used to determine the eligibility of a business, rather than a consumer, for certain purposes, are not consumer reports and the FCRA does not apply to them, even if they contain information on individuals, because Congress did not intend for the FCRA to apply to reports used for commercial purposes (see 116 Cong. Rec. 36572 (1970) (Conf. Report on H.R. 15073)).

4. "(C)redit Worthiness, Credit Standing, Credit Capacity, Character, General Reputation, Personal Characteristics, or Mode of Living * * *

A. General. To be a "consumer report," the information must bear on at least one of the seven characteristics listed in this definition.

B. Credit guides. Credit guides are listings, furnished by credit bureaus to

credit grantors, that rate how well consumers pay their bills. Such guides are a series of "consumer reports," because they contain information which is used for the purpose of serving as a factor in establishing the consumers' eligibility for credit. However, if they are coded (by identification such as social security number, driver's license number, or bank account number) so that the consumer's identity is not disclosed, they are not "consumer reports" until decoded. (See discussion of uncoded credit guides under section 604(3)(A), item 8 *infra*.)

C. Motor vehicle reports. Motor vehicle reports are distributed by state motor vehicle departments, generally to insurance companies upon request, and usually reveal a consumer's entire driving record, including arrests for driving offenses. Such reports are consumer reports when they are sold by a Department of Motor Vehicles for insurance underwriting purposes and contain information bearing on the consumer's "personal characteristics," such as arrest information. The Act's legislative history indicates Congress intended the Act to cover mutually beneficial exchanges of information between commercial enterprises rather than between governmental entities. Accordingly, these reports are not consumer reports when provided to other governmental authorities involved in licensing or law enforcement activities. (See discussion titled "State Departments of Motor Vehicles," under section 603(f), item 10 *infra*.)

D. Consumer lists. A list of the names of creditworthy individuals, or of individuals on whom credit bureaus have derogatory information, is a series of "consumer reports" because the information bears on credit worthiness.

E. Public record information. A report solely of public record information is not a "consumer report" unless that information is provided by a consumer reporting agency, is collected or used for the purposes identified in section 603(d), and bears on at least one of the seven characteristics listed in the definition. Public record information relating to records of arrest, or the institution or disposition of civil or criminal proceedings, bears on one or more of these characteristics.

F. Name and address. A report limited solely to the consumer's name and address alone, with no connotations as to credit worthiness or other characteristics, does not constitute a "consumer report," if it does not bear on any of the seven factors.

G. Rental characteristics. Reports about rental characteristics (e.g., consumers' evictions, rental payment

histories, treatment of premises) are consumer reports, because they relate to character, general reputation, personal characteristics, or mode of living.

5. "(U)sed or Expected to Be Used or Collected in Whole or in Part for the Purpose of Serving as a Factor in Establishing the Consumer's Eligibility * * *

A. Law enforcement bulletins. Bulletins that are limited to a series of descriptions, sometimes accompanied by photographs, of individuals who are being sought by law enforcement authorities for alleged crimes are not a series of "consumer reports" because they have not been collected for use in evaluating consumers for credit, insurance, employment or other consumer purposes, and it cannot reasonably be anticipated they will be used for such purposes.

B. Directories. Telephone directories and city directories, to the extent they only provide information regarding name, address and phone number, marital status, home ownership, and number of children, are not "consumer reports," because the information is not used or expected to be used in evaluating consumers for credit, insurance, employment or other purposes and does not reflect on credit standing, credit worthiness, or any of the other factors. A list of names of individuals with checking accounts is not a series of consumer reports because the information does not bear on credit worthiness or any of the other factors. A trade directory, such as a list of all insurance agents licensed to do business in a state, is not a series of consumer reports because it is commercial information that would be used for commercial purposes.

C. Use of prior consumer report in preparation. A report that would not otherwise be a consumer report may be a consumer report, notwithstanding the purpose for which it is furnished, if it includes a prior consumer report or information from consumer report files, because it would contain some information "collected in whole or in part" for consumer reporting purposes. For example, an insurance claims report would be a consumer report if a consumer report (or information from a consumer report) were used to prepare it. (See discussion, *infra*, in item 6-C under this subsection.)

D. Use of reports for purposes not anticipated by the reporting party. The question arises whether a report that is not otherwise a consumer report is subject to the FCRA because the recipient subsequently uses the report

¹ However, a creditor denying a consumer's application based on a report from a "third party" must give the disclosure required by section 615(b).

for a permissible purpose. If the reporting party's procedures are such that it neither knows of nor should reasonably anticipate such use, the report is not a consumer report. If a reporting party has taken reasonable steps to insure that the report is not used for such a purpose, and if it neither knows of, nor can reasonably anticipate such use, the report should not be deemed a consumer report by virtue of uses beyond the reporting party's control. A reporting party might establish that it does not reasonably anticipate such use of the report by requiring the recipient to certify that the report will not be used for one of the purposes listed in section 604. (Such procedure may be compared to the requirement in section 607(a), discussed *infra*, that consumer reporting agencies furnishing consumer reports require that prospective users certify the purposes for which the information is sought and certify that the information will be used for no other purpose.) For example, a claims reporting service could use such a certification to avoid having its insurance claims reports deemed "consumer reports" if the report recipient/insurer were to use the report later for "underwriting purposes" under section 604(3)(C), such as terminating insurance coverage or raising the premium.

6. "(E)stablishing the Consumer's Eligibility for (1) Credit or Insurance to Be Used Primarily for Personal, Family or Household Purposes, or (2) Employment Purposes, or (3) Other Purposes Authorized Under Section 604"

A. *Relation to section 604.* Because section 603(d)(3) refers to "purposes authorized under section 604" (often described as "permissible purposes" of consumer reports), some of which overlap purposes enumerated in section 603 (e.g., 603(d)(1) and 603(d)(2)), sections 603 and 604 must be construed together, to determine what are "consumer reports" and "permissible purposes" under the two sections. See discussion *infra*, under section 604.

B. *Commercial credit or insurance.* A report on a consumer for credit or insurance in connection with a business operated by the consumer is not a "consumer report," and the Act does not apply to it.

C. *Insurance claims reports.* (It is assumed that information in prior consumer reports is not used in claims reports. See discussion, *supra*, in item 5-C under this subsection.) Reports provided to insurers by claims investigation services solely to determine the validity of insurance claims are not consumer reports,

because section 604(3)(C) specifically sets forth only underwriting (not claims) as an insurance-related purpose, and section 603(d)(1) deals specifically with eligibility for insurance and no other insurance-related purposes. To construe section 604(3)(E) as including reports furnished in connection with insurance claims would be to disregard the specific language of sections 604(3)(C) and 603(d)(1).

D. *Scope of employment purpose.* A report that is used or is expected to be used or collected in whole or in part in connection with establishing an employee's eligibility for "promotion, reassignment or retention," as well as to evaluate a job applicant, is a consumer report because sections 603(d)(2) and 604(3)(B) use the term "employment purposes," which section 603(h) defines to include these situations.

E. *Bad check lists.* A report indicating that an individual has issued bad checks, provided by printed list or otherwise, to a business for use in determining whether to accept consumers' checks tendered in transactions primarily for personal, family or household purposes, is a consumer report. The information furnished bears on consumers' character, general reputation and personal characteristics, and it is used or expected to be used in connection with business transactions involving consumers.

F. *Tenant screening reports.* A report used to determine whether to rent a residence to a consumer is a consumer report, because it is used for a business transaction that the consumer wishes to enter into for personal, family or household purposes.

7. Exclusions From the Definition of "Consumer Report"

A. "(Any) reports containing information solely as to transactions or experiences between the consumer and the person making the report;"—(1) *Examples of Sources.* The exemption applies to reports limited to transactions or experiences between the consumer and the entity making the report (e.g., retail stores, hospitals, present or former employers, banks, mortgage servicing companies, credit unions, or universities).

(2) *Information beyond the reporting entity's own transactions or experiences with the consumer.*

The exemption does not apply to reports by these entities of information beyond their own transactions or experiences with the consumer. An example is a creditor's or an insurance company's report of the reasons it

cancelled credit or insurance, based on information from an outside source.

(3) *Opinions Concerning Transactions or Experiences*

The exemption applies to reports that are not limited to the facts, but also include opinions (e.g., use of the term "slow pay" to describe a consumer's transactions with a creditor), as long as the facts underlying the opinions involve only transactions or experiences between the consumer and the reporting entity.

B. "(Any) authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;"—(1) *General.* The exemption applies to a credit or debit card issuer's written, oral, or electronic communication of its decision whether or not to authorize a charge, in response to a request from a merchant or other party that the consumer has asked to honor the card.

C. "(Any) report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to the consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615."—(1) *General.* The exemption covers retailers' attempts to obtain credit for their individual customers from an outside source (such as a bank or a finance company). The communication by the financial institution of its decision whether to extend credit is not a "consumer report" if the retailer informs the customer of the name and address of the financial institution to which the application or contract is offered and the financial institution makes the disclosures required by section 615 of the Act. Such disclosures must be made only when there is a denial of, or increase in the charge for, credit or insurance. (See discussion of section 615, item 10, *infra*.)

(2) *Information included in the exemption.*

The exemption is not limited to a simple "yes" or "no" response, but includes the information constituting the basis for the credit denial, because it applies to "any report."

(3) *How third party creditors can insure that the exemption applies.*

Creditors, who are requested by dealers or merchants to make such specific extensions of credit, can assure that communication of their decision to the dealer or merchant will be exempt under this section from the term

"consumer report," by having written agreements that require such parties to inform the consumer of the creditor's name and address and by complying with any applicable provisions of section 615.

Section 603(e) defines "investigative consumer report" as "a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer."

1. Relation to Other Sections

The term "investigative consumer report" denotes a subset of "consumer report" for which the Act imposes additional requirements on recipients and consumer reporting agencies. Persons procuring "investigative consumer reports" must make certain disclosures to the consumers who are the subjects of the reports, as required by section 606. Consumer reporting agencies must comply with section 614, when furnishing "investigative consumer reports" containing adverse information that is not a matter of public record. Consumer reporting agencies making disclosure to consumers pursuant to section 609 are not required to disclose "sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose."

2. General

An "investigative consumer report" is a type of "consumer report" that contains information that is both related to a consumer's character, general reputation, personal characteristics or mode of living and obtained by personal interviews with the consumer's neighbors, friends, associates or others.

3. Types of Sources Interviewed

A report consisting of information from any third party concerning the subject's character (reputation, etc.) may be an investigative consumer report because the phrase "obtained through personal interviews * * * with others" includes any source that is a third party interviewee. A report containing interview information obtained solely

from the subject is not an "investigative consumer report."

4. Telephone Interviews

A consumer report that contains information on a consumer's "character, general reputation, personal characteristics or mode of living" obtained through telephone interviews with third parties is an "investigative consumer report," because "personal interviews" includes interviews conducted by telephone as well as in person.

5. Identity of Interviewer

A consumer report is an "investigative consumer report" if personal interviews are used to obtain information reported on a consumer's "character, general reputation, personal characteristics or mode of living," regardless of who conducted the interview.

6. Noninvestigative Information in "Investigative Consumer Reports"

An "investigative consumer report" may also contain noninvestigative information, because the definition includes reports, a "portion" of which are investigative reports

7. Exclusions From "Investigative Consumer Reports."

A report that consists solely of information gathered from observation by one who drives by the consumer's residence is not an "investigative consumer report," because it contains no information from "personal interviews."

Section 603(f) defines "consumer reporting agency" as "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

1. Relation to Other Sections

A. Duties imposed on "consumer reporting agencies." The Act imposes a number of duties on "consumer reporting agencies." They must have permissible purposes to furnish consumer reports (section 604), avoid furnishing obsolete adverse information in certain consumer reports (sections 605, 607(a)), adopt reasonable procedures to assure privacy (section 604, 607(a)), and accuracy (section 607(b)) of consumer reports, provide only limited disclosures to governmental

agencies (section 608), provide consumers certain disclosures upon request (sections 609 and 610) at no cost or for a reasonable charge (section 612), follow certain procedures if a consumer disputes the completeness or accuracy of any item of information contained in his file (section 611), and follow certain procedures in reporting public record information for employment purposes or when reporting adverse information other than public record information in investigative consumer reports (sections 613, 614).

B. Relation to "consumer reports."

The term "consumer reporting agency," as defined in section 603(f), includes certain persons who assemble or evaluate information on individuals for the purpose of furnishing "consumer reports" to third parties. Conversely, section 603(d) defines the term "consumer report" to mean the communication of certain information by a "consumer reporting agency." In other words, the terms "consumer report" in section 603(d) and "consumer reporting agency" as defined in section 603(f) are defined in a mutually dependent manner and must therefore be construed together. For example, a party is not a "consumer reporting agency" if it provides only information that is excepted from the definition of "consumer report" under section 603(d), such as reports limited to the party's own transactions or experiences with a consumer, or credit information on organizations.

2. Isolated Reports

Parties that do not "regularly" engage in assembling or evaluating information for the purpose of furnishing consumer reports to third parties are not consumer reporting agencies. For example, a creditor that furnished information on a consumer to a governmental entity in connection with one of its investigations, would not "regularly" be making such disclosure for a fee or on a cooperative nonprofit basis, and therefore would not become a consumer reporting agency, even if the information exceeded the creditor's transactions or experiences with the consumer.

3. Provision of Credit Report to Report Subject

A consumer report user does not become a consumer reporting agency by regularly giving a copy of the report, or otherwise disclosing it, to the consumer who is the subject of the report, because it is not disclosing the information to a "third party."

4. Employment Agency

An employment agency that routinely obtains information on job applicants from their former employers and furnishes the information to prospective employers is a consumer reporting agency.

5. Information Compiled for Insurance Underwriting

A business that compiles claim payment histories on individuals from insurers and furnishes them to insurance companies for use in underwriting decisions concerning those individuals is a consumer reporting agency.

6. Private Investigators and Detective Agencies

Private investigators and detective agencies that regularly obtain consumer reports and furnish them to clients may thereby become consumer reporting agencies.

7. Collection Agencies and Creditors

Collection agencies and creditors become consumer reporting agencies if they regularly furnish information beyond their transactions or experiences with consumers to third parties for use in connection with consumers' transactions.

8. Joint Users of Consumer Reports

Entities that share consumer reports with others that are jointly involved in decisions for which there are permissible purposes to obtain the reports may be "joint users" rather than consumer reporting agencies. For example, if a lender forwards consumer reports to governmental agencies administering loan guarantee programs (or to other prospective loan insurers or guarantors), or to other parties whose approval is needed before it grants credit, or to another creditor for use in considering a consumer's loan application at the consumer's request, the lender does not become a consumer reporting agency by virtue of such action. An agent or employee that obtains consumer reports does not become a consumer reporting agency by sharing such reports with its principal or employer in connection with the purposes for which the reports were initially obtained.

9. Loan Exchanges

Loan exchanges, which are generally owned and operated on a cooperative basis by consumer finance companies, constitute a mechanism whereby each member furnishes the exchange information concerning the full identity and loan amount of each of its borrowers, and receives information

from the exchange concerning the number and types of outstanding loans for each of its applicants. A loan exchange or any other exchange that regularly collects information bearing on decisions to grant consumers credit or insurance for personal, family or household purposes, or employment, is a "consumer reporting agency."

10. State Departments of Motor Vehicles

State motor vehicle departments are "consumer reporting agencies" if they regularly furnish motor vehicle reports containing information bearing on the consumer's "personal characteristics," such as arrest information, to insurance companies for insurance underwriting purposes. (See discussion of motor vehicle reports under section 603(d), item 4c *supra*.)

11. Federal Agencies

The Office of Personnel Management collects and files data concerning current and potential employees of the Federal Government and transmits that information to other government agencies for employment purposes. Because Congress did not intend that the FCRA apply to the Office of Personnel Management and similar federal agencies (see 116 Cong. Rec. 36576 (1970) (remarks of Rep. Brown)), no such agency is a "consumer reporting agency."

12. Credit Application Information

A creditor that provides information from a consumer's application to a credit bureau, for verification as part of the creditor's evaluation process that includes obtaining a report on the consumer from that credit bureau, does not thereby become a "consumer reporting agency," because the creditor does not provide the information for "fees, dues, or on a cooperative nonprofit basis," but rather pays the bureau to verify the information when it provides a consumer report on the applicant.

Section 603(g) defines "file," when used in connection with information on any consumer, to mean "all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored."

1. Relation to Other Sections

Consumer reporting agencies are required to make disclosures of all information in their "files" to consumers upon request (section 609) and to follow reinvestigation procedures if the consumer disputes the completeness or accuracy of any item of information contained in his "file" (section 611).

2. General

The term "file" denotes all information on the consumer that is recorded and retained by a consumer reporting agency that might be furnished, or has been furnished, in a consumer report on that consumer.

3. Audit Trail

The term "file" does not include an "audit trail" (a list of changes made by a consumer reporting agency to a consumer's credit history record, maintained to detect fraudulent changes to that record), because such information is not furnished in consumer reports or used as a basis for preparing them.

4. Other Information

The term "file" does not include information in billing records or in the consumer relations folder that a consumer reporting agency opens on a consumer who obtains disclosures or files a dispute, if the information has not been used in a consumer report and would not be used in preparing one.

Section 603(h) defines "employment purposes" to mean "a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee."

1. Relation to Other Sections

The term "employment purposes" is used as part of the definition of "consumer reports" (section 603(d)(2)) and as a permissible purpose for the furnishing of consumer reports (section 604(3)(B)). Where an investigative consumer report is to be used for "employment purposes" for which a consumer has not specifically applied, section 606(a)(2) provides that the notice otherwise required by section 606(a)(1) need not be sent. When a consumer reporting agency furnishes public record information in reports "for employment purposes," it must follow the procedure set out in section 613.

2. Security Clearances

A report in connection with security clearances of a government contractor's employees would be for "employment purposes" under this section.

Section 603(i) defines "medical information" to mean "information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities."

1. Relation to Other Sections

Under section 609(a)(1), a consumer reporting agency must, upon the

consumer's request and proper identification, disclose the nature and substance of all information in its files on the consumer, except "medical information."

2. Information From Non-medical Sources

Information from non-medical sources such as employers, is not "medical information."

Section 604—Permissible Purposes of Reports

"A consumer reporting agency may furnish a consumer report under the following circumstances and no other: * * *

1. Relation to Section 603

Sections 603(d)(3) and 604 must be construed together to determine what are "permissible purposes," because section 603(d)(3) refers to "purposes authorized under section 604" (often described as "permissible purposes" of consumer reports), and some purposes are enumerated in section 603 (e.g., sections 603(d)(1) and 603(d)(2)). Subsections of sections 603 and 604 that specifically set forth "permissible purposes" relating to credit, insurance and employment, are the only subsections that cover "permissible purposes" relating to those three areas. Section 604(3)(E), a general subsection, is limited to purposes not otherwise addressed in section 604(3)(A)-(D).

A. *Credit.* Sections 603(d)(1)—which defines "consumer report" to include certain reports for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance primarily for personal, family, or household purposes—and 604(3)(A) must be read together as fully describing permissible purposes involving credit for obtaining consumer reports. Accordingly, section 604(3)(A) permits the furnishing of a consumer report for use in connection with a credit transaction involving the consumer, primarily for personal, family or household purposes, and involving the extension of credit to, or review or collection of an account of, the consumer.

B. *Insurance.* Sections 603(d)(1) and 604(3)(C) must be read together as describing the only permissible insurance purposes for obtaining consumer reports. Accordingly, section 604(3)(C) permits the furnishing of a consumer report, provided it is for use in connection with the underwriting of insurance involving the consumer, primarily for personal, family, or household purposes.

C. *Employment.* Employment is covered exclusively by sections 603(d)(2) and 604(3)(B), and by section 603(h) (which defines "employment purposes"). Therefore, "permissible purposes" relating to employment include reports used for evaluating a consumer "for employment, promotion, reassignment or retention as an employee."

D. *Other purposes.* "Other purposes" are referred to in section 603(d)(3) and covered by section 604(3)(E), as well as sections 604(1), 604(2) and 604(3)(D) (which contain specific purposes not involving credit, insurance, employment). Permissible purposes relating to section 604(3)(E) are limited to transactions that consumers enter into primarily for personal, family or household purposes (excluding credit, insurance or employment, which are specifically covered by other subsections discussed above). The FCRA does not cover reports furnished for transactions that consumers enter into primarily in connection with businesses they operate (e.g., a consumer's rental of equipment for use in his retail store).

2. Relation to Other Sections

A. *Section 607(a).* Section 607(a) requires consumer reporting agencies to keep information confidential by furnishing consumer reports only for purposes listed under section 604, and to follow specified, reasonable procedures to achieve this end. Section 619 provides criminal sanctions against any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

B. *Section 608.* Section 608 allows "consumer reporting agencies" to furnish governmental agencies specified identifying information concerning consumers, notwithstanding the limitations of section 604.

Section 604(1)—A consumer reporting agency may furnish a consumer report "in response to the order of a court having jurisdiction to issue such an order."

1. Subpoena

A subpoena, including a grand jury subpoena, is not an "order of a court" unless signed by a judge.

2. Internal Revenue Service Summons

An I.R.S. summons is an exception to the requirement that an order be signed by a judge before it constitutes an "order of a court" under this section, because a 1976 revision to Federal statutes (26 U.S.C. 7609) specifically requires a consumer reporting agency to

furnish a consumer report in response to an I.R.S. summons upon receipt of the designated I.R.S. certificate that the consumer has not filed a timely motion to quash the summons.

Section 604(2)—A consumer reporting agency may furnish a consumer report "in accordance with the written instructions of the consumer to whom it relates."

1. No Other Permissible Purpose Needed

If the report subject furnishes written authorization for a report, that creates a permissible purpose for furnishing the report.

2. Refusal to Furnish Report

The consumer reporting agency may refuse to furnish the report because the statute is permissive, not mandatory. (Requirements that consumer reporting agencies make disclosure to consumers (as contrasted with furnishing reports to users) are discussed under sections 609 and 610, *infra*.)

*Section 604(3)(A)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;"*

1. Reports Sought in Connection with the "Review or Collection of an Account"

A. *Reports for collection.* A collection agency has a permissible purpose under this section to receive a consumer report on a consumer for use in attempting to collect that consumer's debt, regardless of whether that debt is assigned or referred for collection. Similarly, a detective agency or private investigator, attempting to collect a debt owed by a consumer, would have a permissible purpose to obtain a consumer report on that individual for use in collecting that debt. An attorney may obtain a consumer report under this section on a consumer for use in connection with a decision whether to sue that individual to collect a credit account.

B. *Unsolicited reports.* A consumer reporting agency may not send an unsolicited consumer report to the recipient of a previous report on the same consumer, because the recipient will not necessarily have a permissible purpose to receive the unsolicited report.² For example, the recipient may

² Of course a consumer reporting agency must furnish notifications required by section 611(d).

have rejected the consumer's application or ceased to do business with the consumer. (See also discussion in section 607, item 2C, *infra*.)

2. Judgment Creditors

A judgment creditor has a permissible purpose to receive a consumer report on the judgment debtor for use in connection with collection of the judgment debt, because it is in the same position as any creditor attempting to collect a debt from a consumer who is the subject of a consumer report.

3. Child Support Debts

A district attorney's office or other child support agency may obtain a consumer report in connection with enforcement of the report subject's child support obligation, established by court (or quasi-judicial administrative) orders, since the agency is acting as or on behalf of the judgment creditor, and is, in effect, collecting a debt. However, a consumer reporting agency may not furnish consumer reports to child support agencies seeking to establish paternity or the duty to pay child support.

4. Tax Obligations

A tax collection agency has no general permissible purpose to obtain a consumer report to collect delinquent tax accounts, because this subsection applies only to collection of "credit" accounts. However, if a tax collection agency acquired a tax lien having the same effect as a judgment or obtained a judgment, it would be a judgment creditor and would have a permissible purpose for obtaining a consumer report on the consumer who owed the tax. Similarly, if a consumer taxpayer entered an agreement with a tax collection agency to pay taxes according to some timetable, that agreement would create a debtor-creditor relationship, thereby giving the agency a permissible purpose to obtain a consumer report on that consumer.

5. Information on an Applicant's Spouse

A. Permissible purpose. A creditor may request any information concerning an applicant's spouse if that spouse will be permitted to use the account or will be contractually liable upon the account, or the applicant is relying on the spouse's income as a basis for repayment of the credit requested. A creditor may request any information concerning an applicant's spouse if (1)

upon the consumer's requests, to prior recipients of reports containing disputed information that is deleted or that is the subject of a dispute statement under section 611(b).

the state law doctrine of necessities applies to the transaction, or (2) the applicant resides in a community property state, or (3) the property upon which the applicant is relying as a basis for repayment of the credit requested is located in such a state, or (4) the applicant is acting as the agent of the nonapplicant spouse.

B. Lack of permissible purpose. If the creditor receives information clearly indicating that the applicant is not acting as the agent of the nonapplicant spouse, and that the applicant is relying only on separate property to repay the credit extended, and that the state law doctrine of necessities does not apply to the transaction and that the applicant does not reside in a community property state, the creditor does not have a permissible purpose for obtaining a report on a nonapplicant spouse. A permissible purpose for making a consumer report on a nonapplicant spouse can never exist under the FCRA, where Regulation B, issued under the Equal Credit Opportunity Act (12 CFR 202), prohibits the creditor from requesting information on such spouse. There is no permissible purpose to obtain a consumer report on a nonapplicant former spouse or on a nonapplicant spouse who has legally separated or otherwise indicated an intent to legally disassociate with the marriage. (This does not preclude reporting a prior joint credit account of former spouses for which the spouse that is the subject of the report is still contractually liable. See discussion in section 607, item 3-D *infra*.)

6. Prescreening

"Prescreening" means the process whereby a consumer reporting agency compiles or edits a list of consumers who meet specific criteria and provides this list to the client or a third party (such as a mailing service) on behalf of the client for use in soliciting these consumers for the client's products or services. The process may also include demographic or other analysis of the consumers on the list (*e.g.*, use of census tract data reflecting real estate values) by the consumer reporting agency or by a third party employed for that purpose (by either the agency or its client) before the list is provided to the consumer reporting agency's client. In such situations, the client's creditworthiness criteria may be provided only to the consumer reporting agency and not to the third party performing the demographic analysis. The consumer reporting agency that performs a "prescreening" service may furnish a client with several different lists of consumers who meet different sets of

creditworthiness criteria supplied by the client, who intends to make different credit offers (*e.g.*, various credit limits) to consumers who meet the different criteria.

A prescreened list constitutes a series of consumer reports, because the list conveys the information that each consumer named meets certain criteria for creditworthiness. Prescreening is permissible under the FCRA if the client agrees in advance that each consumer whose name is on the list after prescreening will receive an offer of credit. In these circumstances, a permissible purpose for the prescreening service exists under this section, because of the client's present intent to grant credit to all consumers on the final list, with the result that the information is used "in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to * * * the consumer."

7. Seller of Property Extending Credit

A seller of property has a permissible purpose under this subsection to obtain a consumer report on a prospective purchaser to whom he is planning to extend credit.

8. Uncoded Credit Guides

A consumer reporting agency may not furnish an uncoded credit guide, because the recipient does not have a permissible purpose to obtain a consumer report on each consumer listed. (As discussed under section 603(d), item 4 *supra*, credit guides are listings that credit bureaus furnish to credit grantors, rating how consumers pay their bills. Such guides are a series of "consumer reports" on the "consumers" listed therein, unless coded so that the consumer's identity is not disclosed.)

9. Liability for Bad Checks

A party attempting to recover the amount due on a bad check is attempting to collect a debt and, therefore, has a permissible purpose to obtain a consumer report on the consumer who wrote it, and on any other consumer who is liable for the amount of that check under applicable state law.

Section 604(3)(B)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information for employment purposes;"

1. Current Employees

An employer may obtain a consumer report on a current employee in

connection with an investigation of the disappearance of money from employment premises, because "retention as an employee" is included in the definition of "employment purposes" (section 603(h)).

2. Consumer Reports on Applicants and Non-applicants

An employer may obtain a consumer report for use in evaluating the subject's application for employment but may not obtain a consumer report to evaluate the application of a consumer who is not the subject of the report.

3. Grand Jurors

The fact that grand jurors are usually paid a stipend for their service does not provide a district attorney's office a permissible purpose for obtaining consumer reports on them, because such service is a duty, not "employment."

*Section 604(3)(C)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information in connection with the underwriting of insurance involving the consumer;"*

1. Underwriting

An insurer may obtain a consumer report to decide whether or not to issue a policy to the consumer, the amount and terms of coverage, the duration of the policy, the rates or fees charged, or whether or not to renew or cancel a policy, because these are all "underwriting" decisions.

2. Claims

An insurer may not obtain a consumer report for the purpose of evaluating a claim (to ascertain its validity or otherwise determine what action should be taken), because permissible purposes relating to insurance are limited by this section to "underwriting" purposes.

*Section 604(3)(D)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status * * *"*

1. Appropriate recipient

Any party charged by law (including a rule or regulation having the force of law) with responsibility for assessing the consumer's eligibility for the benefit (not only the agency directly responsible for administering the benefit) has a permissible purpose to receive a

consumer report. For example, a district attorney's office or social services bureau, required by law to consider a consumer's financial status in determining whether that consumer qualifies for welfare benefits, has a permissible purpose to obtain a report on the consumer for that purpose. Similarly, consumer reporting agencies may furnish consumer reports to townships on consumers whose financial status the townships are required by law to consider in determining the consumers' eligibility for assistance, or to professional boards (e.g., bar examiners) required by law to consider such information on applicants for admission to practice.

2. Inappropriate Recipient

Parties not charged with the responsibility of determining a consumer's eligibility for a license or other benefit, for example, a party competing for an FCC radio station construction permit, would not have a permissible purpose to obtain a consumer report on that consumer.

3. Initial or Continuing Benefit

The permissible purpose includes the determination of a consumer's continuing eligibility for a benefit, as well as the evaluation of a consumer's initial application for a benefit. If the governmental body has reason to believe a particular consumer's eligibility is in doubt, or wishes to conduct random checks to confirm eligibility, it has a permissible purpose to receive a consumer report.

*Section 604(3)(E)—A consumer reporting agency may issue a consumer report to "a person which it has reason to believe * * * otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer."*

1. Relation to Other Subsections of Section 604(3)

The issue of whether credit, employment, or insurance provides a permissible purpose is determined exclusively by reference to subsection (A), (B), or (C), respectively.

2. Commercial Transactions

The term "business transaction" in this section means a business transaction with a consumer primarily for personal, family, or household purposes. Business transactions that involve purely commercial purposes are not covered by the FCRA.

3. "Legitimate Business Need"

Under this subsection, a party has a permissible purpose to obtain a consumer report on a consumer for use in connection with some action the consumer takes from which he or she might expect to receive a benefit that is not more specifically covered by subsections (A), (B), or (C). For example, a consumer report may be obtained on a consumer who applies to rent an apartment, offers to pay for goods with a check, applies for a checking account or similar service, seeks to be included in a computer dating service, or who has sought and received over-payments of government benefits that he has refused to return.

4. Litigation

The possibility that a party may be involved in litigation involving a consumer does not provide a permissible purpose for that party to receive a consumer report on such consumer under this subsection, because litigation is not a "business transaction" involving the consumer. Therefore, potential plaintiffs may not always obtain reports on potential defendants to determine whether they are worth suing. The transaction that gives rise to the litigation may or may not provide a permissible purpose. A party seeking to sue on a credit account would have a permissible purpose under section 604(3)(A). (That section also permits judgment creditors and lien creditors to obtain consumer reports on judgment debtors or individuals whose property is subject to the lien creditor's lien.) If that transaction is a business transaction involving the consumer, there is a permissible purpose. If the litigation arises from a tort, there is no permissible purpose. Similarly, a consumer report may not be obtained solely for use in discrediting a witness at trial or for locating a witness. This section does not permit consumer reporting agencies to furnish consumer reports for the purpose of locating a person suspected of committing a crime. (As stated in the discussion of section 608 *infra* (item 2), section 608 permits the furnishing of specified, limited identifying information to governmental agencies, notwithstanding the provisions of section 604.)

5. Impermissible Purposes

A consumer reporting agency may not furnish a consumer report to satisfy a requester's curiosity, or for use by a news reporter in preparing a newspaper or magazine article.

6. Agents

A. General. An agent³ of a party with a "permissible purpose" may obtain a consumer report on behalf of his principal, where he is involved in the decision that gives rise to the permissible purpose. Such involvement may include the agent's making a decision (or taking action) for the principal, or assisting the principal in making the decision (e.g., by evaluating information). In these circumstances, the agent is acting on behalf of the principal. In some cases, the agent and principal are referred to as "joint users." See discussion in section 603(f), *supra* (item 8).

B. Real estate agent. A real estate agent may obtain a consumer report on behalf of a seller, to evaluate the eligibility as a prospective purchaser of a subject who has expressed an interest in purchasing property from the seller.

C. Private detective agency. A private detective agency may obtain a consumer report as agent for its client while investigating a report subject that is a client's prospective employee, or in connection with advising a client concerning a business transaction with the report subject or in attempting to collect a debt owed its client by the subject of the report. In these circumstances, the detective agency is acting on behalf of its client.

D. Rental clearance agency. A rental clearance agency that obtains consumer reports to assist owners of residential properties in screening consumers as tenants, has a permissible purpose to obtain the reports, if it uses them in applying the landlord's criteria to approve or disapprove the subjects as tenant applicants. Similarly, an apartment manager investigating applicants for apartment rentals by a landlord may obtain consumer reports on these applicants.

E. Attorney. An attorney collecting a debt for a creditor client, including a party suing on a debt or collecting on behalf of a judgment creditor or lien creditor, has a permissible purpose to obtain a consumer report on the debtor to the same extent as the client.

Section 604—General

1. Furnishing of Consumer Reports to Other Consumer Reporting Agencies

A consumer reporting agency may furnish a consumer report to another consumer reporting agency for it to furnish pursuant to a subscriber's request. In these circumstances, one

³ Of course agents and principals are bound by the Act.

consumer reporting agency is acting on behalf of another.

2. Consumer's Permission not Needed

When permissible purposes exist, parties may obtain, and consumer reporting agencies may furnish, consumer reports without the consumers' permission or over their objection. Similarly, parties may furnish information concerning their transactions with consumers to consumer reporting agencies and others, and consumer reporting agencies may gather information, without consumers' permission.

3. User's Disclosure of Report to Subject Consumer

The FCRA does not prohibit a consumer report user from giving a copy of the report, or otherwise disclosing it, to the consumer who is the subject of the report.

Section 605—Obsolete Information

"(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information * * *:

(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$20,000, or more."

1. General

Section 605(a) provides that most adverse information more than seven years old may not be reported, except in certain circumstances set out in section 605(b). With respect to delinquent accounts, accounts placed for collection, and accounts charged to profit and loss, there are many dates that could be deemed to commence seven year reporting periods. The discussion in subsections (a)(2), (a)(4), and (a)(6) is intended to set forth a clear, workable rule that effectuates Congressional intent.

2. Favorable Information

The Act imposes no time restriction on reporting of information that is not adverse.

3. Retention of Information in Files

Consumer reporting agencies may retain obsolete adverse information and furnish it in reports for purposes that are exempt under subsection (b) (e.g., credit for a principal amount of \$50,000 or more).

4. Use of Shorter Periods

The section does not require consumer reporting agencies to report adverse information for the time periods set forth, but only prohibits them from reporting adverse items beyond those time periods.

5. Inapplicability to Users

The section does not limit creditors or others from using adverse information that would be "obsolete" under its terms, because it applies only to reporting by consumer reporting agencies. Similarly, this section does not bar a creditor's reporting such adverse obsolete information concerning its transactions or experiences with a consumer, because the report would not constitute a consumer report.

6. Indicating the Existence of Nonspecified, Obsolete Information

A consumer reporting agency may not furnish a consumer report indicating the existence of obsolete adverse information, even if no specific item is reported. For example, a consumer reporting agency may not communicate the existence of a debt older than seven years by reporting that a credit grantor cannot locate a debtor whose debt was charged off ten years ago.

7. Operative Dates

The times or dates set forth in this section, which relate to the occurrence of events involving adverse information, determine whether the item is obsolete. The date that the consumer reporting agency acquired the adverse information is irrelevant to how long that information may be reported.

Section 605(a)(1)—"Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years."

1. Relation to Other Subsections

The reporting of suits and judgments is governed by subsection (a)(2), the reporting of accounts placed for collection or charged to profit and loss is governed by subsection (a)(4), and the reporting of other delinquent accounts is governed by subsection (a)(6). Any such item, even if discharged in bankruptcy,

may be reported separately for the applicable seven year period, while the existence of the bankruptcy filing may be reported for ten years.

2. Wage Earner Plans

Wage earner plans may be reported for ten years, because they are covered by Title 11 of the United States Code.

3. Date for Filing

A voluntary bankruptcy petition may be reported for ten years from the date that it is filed, because the filing of the petition constitutes the entry of an "order for relief" under this subsection, just like a filing under the Bankruptcy Act (11 U.S.C. 301).

Section 605(a)(2)—"Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period."

1. Operative Date

For a suit, the term "date of entry" means the date the suit was initiated. A protracted suit may be reported for more than seven years from the date it was entered, if the governing statute of limitations has not expired. For a judgment, the term "date of entry" means the date the judgment was rendered.

2. Paid Judgments

Paid judgments cannot be reported for more than seven years after the judgment was entered, because payment of the judgment eliminates any "governing statute of limitations" under this subsection that might otherwise lengthen the period.

Section 605(a)(3)—"Paid tax liens which, from date of payment, antedate the report by more than seven years."

1. Unpaid Liens

If a tax lien (or other lien) remains unsatisfied, it may be reported as long as it remains filed against the consumer, without limitation, because this subsection addresses only paid tax liens.

Section 605(a)(4)—"Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years."

1. Placement for Collection

The term "placed for collection" means internal collection activity by the creditor, as well as placement with an outside collector, whichever occurs first. Sending of the initial past due notices does not constitute placement for collection. Placement for collection occurs when dunning notices or other

collection efforts are initiated. The reporting period is not extended by assignment to another entity for further collection, or by a partial or full payment of the account. However, where a borrower brings his delinquent account to date and returns to his regular payment schedule, and later defaults again, a consumer reporting agency may disregard any collection activity with respect to the first delinquency and measure the reporting period from the date the account was placed for collection as a result of the borrower's ultimate default. A consumer's repayment agreement with a collection agency can be treated as a new account that has its own seven year period.

2. Charge to Profit and Loss

The term "charged to profit and loss" means action taken by the creditor to write off the account, and the applicable time period is measured from that event. If an account that was charged off is later paid in part or paid in full by the consumer, the reporting period of seven years from the charge-off is not extended by this subsequent payment.

3. Reporting of a Delinquent Account That is Later Placed for Collection or Charged to Profit and Loss

The fact that an account has been placed for collection or charged to profit and loss may be reported for seven years from the date that either of those events occurs, regardless of the date the account became delinquent. The fact of delinquency may also be reported for seven years from the date the account became delinquent.

Section 605(a)(5)—"Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years."

1. Records

The term "records" means any information a consumer reporting agency has in its files relating to arrest, indictment or conviction of a crime.

2. Computation of Time Period

The seven year reporting period runs from the date of disposition, release or parole, as applicable. For example, if charges are dismissed at or before trial, or the consumer is acquitted, the date of such dismissal or acquittal is the date of disposition. If the consumer is convicted of a crime and sentenced to confinement, the date of release or placement on parole controls. (Confinement, whether continuing or resulting from revocation of parole, may be reported until seven years after the

confinement is terminated.) The sentencing date controls for a convicted consumer whose sentence does not include confinement. The fact that information concerning the arrest, indictment, or conviction of crime is obtained by the reporting agency at a later date from a more recent source (such as a newspaper or interview) does not serve to extend this reporting period.

Section 605(a)(6)—"Any other adverse item of information which antedates the report by more than seven years."

1. Relation to Other Subsections

This section applies to all adverse information that is not covered by section 605(a) (1)-(5). For example, a delinquent account that has neither been placed for collection, nor charged to profit and loss, may be reported for seven years from the date of the last regularly scheduled payment. (Accounts placed for collection or charged to profit and loss may be reported for the time periods stated in section 605(a)(4).)

2. Non Tax Liens

Liens (other than paid tax liens) may be reported as long as they remain filed against the consumer or the consumer's property, and remain effective (under any applicable statute of limitations). (See discussion under section 605(a)(3), *supra*.)

Section 606—Disclosure of Investigative Consumer Reports

"(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after receipt by him of the disclosure required by subsection (a)(1),

make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b)."

1. Relation to Other Sections

The term "investigative consumer report" is defined at section 603(e) to mean a consumer report, all or a portion of which contains information obtained through personal interviews (in person or by telephone) with persons other than the subject, which information relates to the subject's character, general reputation, personal characteristics or mode of living.

2. Inapplicability to Consumer Reporting Agencies

The section applies only to report users, not consumer reporting agencies. The FCRA does not require consumer reporting agencies to inform consumers that information will be gathered or that reports will be furnished concerning them.

3. Inapplicability to Noninvestigative Consumer Reports

The section does not apply to noninvestigative reports.

4. Exemptions

An employer who orders investigative consumer reports on a current employee who has not applied for a job change need not notify the employee, because the term "employment purposes" is defined to include "promotion, reassignment or retention" and subsection (b) provides that the disclosure requirements do not apply to "employment purposes for which the consumer has not specifically applied."

5. Form and Delivery of Notice

The notice must be in writing and delivered to the consumer. The user may include the disclosure in an application for employment, insurance, or credit, if it is clear and conspicuous and not obscured by other language. A user may send the required notice via first class mail. The notice must be mailed or otherwise delivered to the consumer not

later than three days after the report was first requested.

6. Content of Notice of Right to Disclosure

The notice must clearly and accurately disclose that an "investigative consumer report" including information as to the consumer's character, general reputation, personal characteristics and mode of living (whichever are applicable), may be made. The disclosure must also state that an investigative consumer report involves personal interviews with sources such as neighbors, friends, or associates. The notice may include any additional, accurate information about the report, such as the types of interviews that will be conducted. The notice must include a statement informing the consumer of the right to request complete and accurate disclosure of the nature and scope of the investigation.

7. Content of Disclosure of Report

When the consumer requests disclosure of the "nature and scope" of the investigation, such disclosure must include a complete and accurate description of the types of questions asked, the number and types of persons interviewed, and the name and address of the investigating agency. The user need not disclose the names of sources of information, nor must it provide the consumer with a copy of the report. A report user that provides the consumer with a blank copy of the standardized form used to transmit the report from the agency to the user complies with the requirement that it disclose the "nature" of the investigation.

Section 607—Compliance Procedures

"(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in Section 604.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates."

1. Procedures to Avoid Reporting Obsolete Information

A. *General.* A consumer reporting agency should establish procedures with its sources of adverse information that will avoid the risk of reporting obsolete information. For example, the agency should either require a creditor to supply the date an account was placed for collection or charged off, or the agency should use a conservative date for such placement or charge off (such as the date of the last regularly scheduled payment), to be sure of complying with the statute.

B. *Retention of obsolete information for reporting in excepted circumstances.* If a consumer reporting agency retains adverse information in its files that is "obsolete" under section 605(a) (e.g., information about a satisfied judgment that is more than seven years old), so that it may be reported for use in transactions described by section 605(b) (i.e., applications for credit or life insurance for \$50,000 or more, or employment at an annual salary of \$20,000 or more), it must have procedural safeguards to avoid reporting the information except in those situations. The procedure should require that such obsolete information be released only after an internal decision that its release will not violate section 605.

2. Procedures to Avoid Reporting for Impermissible Purposes

A. *Verification.* A consumer reporting agency should have a system to verify that it is dealing with a legitimate business having a "permissible purpose" for the information reported. What constitutes adequate verification will vary with the circumstances. If the consumer reporting agency is not familiar with the user, appropriate procedures might require an on-site visit to the user's place of business, or a check of the user's references.

B. *Required certification by user.* A consumer reporting agency should adopt procedures that require prospective report users to identify themselves, certify the purpose for which the information is sought, and certify that the information will be used for no other purpose. A consumer reporting agency should determine initially that users have permissible purposes and ascertain

what those purposes are. It should obtain a specific, written certification that the recipient will obtain reports for those purposes and no others. The user's certification that the report will be used for no other purposes should expressly prohibit the user from sharing the report or providing it to anyone else, other than the subject of the report or to a joint user having the same purpose. A consumer reporting agency should refuse to provide reports to those refusing to provide such certification.

C. Blanket or individual certification. Once the consumer reporting agency obtains a certification from a user (e.g., a creditor) that typically has a permissible purpose for receiving a consumer report, stating that it will use those reports only for specified permissible purposes (e.g., for credit or employment purposes), a certification of purpose need not be furnished for each individual report obtained, provided there is no reason to believe the user may be violating its certification. However, in furnishing reports to users that typically could have both permissible and impermissible purposes for ordering consumer reports (e.g., attorneys and detective agencies), the consumer reporting agency must require the user to provide a separate certification each time it requests a consumer report.

D. Procedures to avoid recipients' abuse of certification. When doubt arises concerning any user's compliance with its contractual certification, a consumer reporting agency must take steps to insure compliance, such as requiring a separate, advance certification for each report it furnishes that user, or auditing that user to verify that it is obtaining reports only for permissible purposes. A consumer reporting agency must cease furnishing consumer reports to users who repeatedly request consumer reports for impermissible purposes.

E. Unauthorized access. A consumer reporting agency should take several other steps when doubt arises concerning whether a user is obtaining reports for a permissible purpose from a computerized system. If it appears that a third party, not a subscriber, has obtained unauthorized access to the system, the consumer reporting agency should take appropriate steps such as altering authorized users' means of access, such as codes and passwords, and making random checks to ensure that future reports are obtained only for permissible purposes. If a subscriber has inadvertently sought reports for impermissible purposes or its employee has obtained reports without a

permissible purpose, it would be appropriate for the consumer reporting agency to alter the subscriber's means of access, and require an individual written certification of the permissible purpose for each report requested or randomly verify such purposes. A consumer reporting agency should refuse to furnish any further reports to a user that repeatedly violates certifications.

F. Use of computerized systems. A consumer reporting agency may furnish consumer reports to users via terminals, provided the consumer reporting agency has taken the necessary steps to ensure that the users have a permissible purpose to receive the reports. (The agency would have to record the identity of consumer report recipients for each consumer, to be able to make any disclosures required under section 609(a)(3) or section 611(d)).

G. Activity reports. If a consumer reporting agency provides "activity reports" on all customers who have open-end accounts with a credit grantor, it must make certain that the credit grantor always notifies the agency when accounts are closed and paid in full, to avoid furnishing reports on former customers or other customers for whom the credit grantor lacks a permissible purpose. (See also discussion in section 604(3)(A), item 1, *supra*.)

3. Reasonable Procedures to Assure Maximum Possible Accuracy

A. General. The section does not require error free consumer reports. If a consumer reporting agency accurately transcribes, stores and communicates consumer information received from a source that it reasonably believes to be reputable, and which is credible on its face, the agency does not violate this section simply by reporting an item of information that turns out to be inaccurate. However, when a consumer reporting agency learns or should reasonably be aware of errors in its reports that may indicate systematic problems (by virtue of information from consumers, report users, from periodic review of its reporting system, or otherwise) it must review its procedures for assuring accuracy. Examples of errors that would require such review are the issuance of a consumer report pertaining entirely to a consumer other than the one on whom a report was requested, and the issuance of a consumer report containing information on two or more consumers (e.g., information that was mixed in the file) in response to a request for a report on only one of those consumers.

B. Required steps to improve accuracy. If the agency's review of its

procedures reveals, or the agency should reasonably be aware of, steps it can take to improve the accuracy of its reports at a reasonable cost, it must take any such steps. It should correct inaccuracies that come to its attention. A consumer reporting agency must also adopt reasonable procedures to eliminate systematic errors that it knows about, or should reasonably be aware of, resulting from procedures followed by its sources of information. For example, if a particular credit grantor has often furnished a significant amount of erroneous consumer account information, the agency must require the creditor to revise its procedures to correct whatever problems cause the errors or stop reporting information from that creditor.

C. Use of automatic data processing equipment. Consumer reporting agencies that use automatic data processing equipment (particularly for long distance transmission of information) should have reasonable procedures to assure that the data is accurately converted into a machine-readable format and not distorted by machine malfunction or transmission failure. Reasonable security procedures must be adopted to minimize the possibility that computerized consumer information will be stolen or altered by either authorized or unauthorized users of the information system.

D. Reliability of sources. Whether a consumer reporting agency may rely on the accuracy of information from a source depends on the circumstances. This section does not hold a consumer reporting agency responsible where an item of information that it receives from a source that it reasonably believes to be reputable appears credible on its face, and is transcribed, stored and communicated as provided by that source. Requirements are more stringent where the information furnished appears implausible or inconsistent, or where procedures for furnishing it seem likely to result in inaccuracies, or where the consumer reporting agency has had numerous problems regarding information from a particular source.

E. Undesignated information in credit transactions. "Undesignated information" means all credit history information in a married (or formerly married) consumer's file, which was not reported to the consumer reporting agency with a designation indicating that the information relates to either the consumer's joint or individual credit experience. The question arises what is meant by reasonable procedures under this section for treatment of credit history in the file of only one (present or

former) spouse (usually the husband) that has not been designated by the procedure in Regulation B, 12 CFR 202.10, which implements the Equal Credit Opportunity Act. (This situation exists only for certain credit history file information compiled before June 1, 1977, and certain accounts opened before that date.) A consumer reporting agency may report information solely in the file of spouse A, when spouse B applies for a separate extension of credit, only if such information relates to accounts for which spouse B was either a user or was contractually liable, or the report recipient has a permissible purpose for a report on spouse A. A consumer reporting agency may not supply all undesignated information from the file of a consumer's spouse in response to a request for a report on the consumer, because some or all of that information may not relate to both spouses. Consumer reporting agencies must honor without charge the request of a married or formerly married individual that undesignated information (that appears only in the files of the individual's present or former spouse) be segregated—i.e., placed in a separate file that is accessible under that individual's name. This procedure insures greater accuracy and protection of the privacy of spouses than does the automatic reporting of undesignated information.

F. Reporting of credit obligation—(1) Past due accounts. A consumer reporting agency must employ reasonable procedures to keep its file current on past due accounts (e.g., by requiring its creditors to notify the credit bureau when a previously past due account has been paid or discharged in bankruptcy), but its failure to show such activity in particular instances, despite the maintenance of reasonable procedures to keep files current, does not violate this section. For example, a consumer reporting agency that reports accurately in 1985 that as of 1983 the consumer owed a retail store money, without mentioning that the consumer eventually paid the debt, does not violate this section if it was not informed by the store or the consumer of the later payment.

(2) Significant, verified information. A consumer reporting agency must report significant, verified information it possesses about an item. For instance, a consumer reporting agency may continue to report a paid account that was previously delinquent, but should also report that the account has been paid. Similarly, a consumer reporting agency may include delinquencies on debts discharged in bankruptcy in

consumer reports, but must accurately note the status of the debt (e.g., discharged, voluntarily repaid). Finally, if a reported bankruptcy has been dismissed, that fact should be reported.

(3) Guarantor obligations. Personal guarantees for obligations incurred by others (including a corporation) may be included in a consumer report on the individual who is the guarantor. The report should accurately reflect the individual's involvement (e.g., as guarantor of the corporate debt).

4. Effect of Criminal Sanctions

Notwithstanding the fact that section 619 provides criminal sanctions against persons who knowingly and willfully obtain information on a consumer from a consumer reporting agency under false pretenses, a consumer reporting agency must follow reasonable procedures to limit the furnishing of reports to those with permissible purposes.

5. Disclosure of Credit Denial

When reporting that a consumer was denied a benefit (such as credit), a consumer reporting agency need not report the reasons for the denial.

6. Content of Report

A consumer report need not be tailored to the user's needs. It may contain any information that is complete, accurate, and not obsolete on the consumer who is the subject of the report. A consumer report may include an account that was discharged in bankruptcy (as well as the bankruptcy itself), as long as it reports a zero balance due to reflect the fact that the consumer is no longer liable for the discharged debt. A consumer report may include a list of recipients of reports on the consumer who is the subject of the report.

7. Completeness of Reports

Consumer reporting agencies are not required to include all existing derogatory or favorable information about a consumer in their reports. (See, however, discussion in section 611, item 14, *infra*, concerning conveying consumer dispute statements.) However, a consumer reporting agency may not mislead its subscribers as to the completeness of its reports by deleting nonderogatory information and not disclosing its policy of making such deletions.

8. User Notice of Adverse Action Based on a Consumer Report

A consumer reporting agency need not require users of its consumer reports to provide any notice to consumers against whom adverse action is taken based on

a consumer report. The FCRA imposes such notice requirements directly on users, under the circumstances set out in section 615.

Section 608—Disclosures to Governmental Agencies

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency."

1. Permissible Purpose Necessary for Additional Information

A consumer reporting agency may furnish limited identifying information concerning a consumer to a governmental agency (e.g., an agency seeking a fugitive from justice) even if that agency does not have a "permissible purpose" under section 604 to receive a consumer report. However, a governmental agency must have a permissible purpose in order to obtain information beyond what is authorized by this section.

2. Entities Covered by Section

The term "governmental agency" includes federal, state, county and municipal agencies, and grand juries. Only governmental agencies may obtain disclosures of identifying information under this section.

Section 609—Disclosures to Consumers

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purpose within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date."

1. Relation to Other Sections

This section states what consumer reporting agencies must disclose to consumers, upon request and proper identification. Section 610 sets forth the conditions under which those disclosures must be made, and section 612 sets forth the circumstances under which consumer reporting agencies may charge for making such disclosures. The term "file" as used in section 609(a)(1) is defined in section 603(g). The term "investigative consumer report," which is used in section 609(a)(2), is defined in section 603(e). The term "medical information," which is used in section 609(a)(1), is defined in section 603(i).

2. Proper Identification

A consumer reporting agency must take reasonable steps to verify the identity of an individual seeking disclosure under this section.

3. Manner of "Proper Identification"

If a consumer provides sufficient identifying information, the consumer reporting agency cannot insist that the consumer execute a "request for interview" form, or provide the items listed on it, as a prerequisite to disclosure. However, the agency may use a form to identify consumers requesting disclosure if it does not use the form to inhibit disclosure, or to obtain any waiver of the consumers' rights. A consumer reporting agency may provide disclosure by telephone without a written request, if the consumer is properly identified, but may insist on a written request before providing such disclosure.

4. Power of Attorney

A consumer reporting agency may disclose a consumer's file to a third party authorized by the consumer's written power of attorney to obtain the disclosure, if the third party presents adequate identification and fulfills other applicable conditions of disclosure. However, the agency may also disclose the information directly to the consumer.

5. Nature of Disclosure Required

A consumer reporting agency must disclose the nature and substance of all items in the consumer's file, no matter

how or where they are stored (e.g., in other offices of the consumer reporting agency). The consumer reporting agency must have personnel trained to explain to the consumer any information furnished in accordance with the Act. Particularly when the file includes coded information that would be meaningless to the consumer, the agency's personnel must assist the consumer to understand the disclosures. Any summary must not mischaracterize the nature of any item of information in the file. The consumer reporting agency is not required to provide a copy of the file, or any other written disclosure, or to read the file verbatim to the consumer or to permit the consumer to examine any information in its files. A consumer reporting agency may choose to usually comply with the FCRA in writing, by providing a copy of the file to the consumer or otherwise.

6. Medical Information

Medical information includes information obtained with the consumer's consent from physicians and medical facilities, but does not include comments on a consumer's health by non-medical personnel. A consumer reporting agency is not required to disclose medical information in its files to consumers, but may do so. Alternatively, a consumer reporting agency may inform consumers that there is medical information in the files concerning them and supply the name of the doctor or other source of the information. Consumer reporting agencies may also disclose such information to a physician of the consumer's choice, upon the consumer's written instructions pursuant to section 604(2).

7. Ancillary Information

A consumer reporting agency is not required to disclose information consisting of an audit trail of changes it makes in the consumer's file, billing records, or the contents of a consumer relations folder, if the information is not from consumer reports and will not be used in preparing future consumer reports. Such data is not included in the term "information in its files" which must be disclosed to the consumer pursuant to this section. Similarly, a point score that is provided to evaluate the report for its recipient (and/or the scoring system used to calculate the score) need not be disclosed, because the score is not used in preparing future reports. A consumer reporting agency must disclose claims report information only if it has appeared in consumer reports.

8. Information on Other Consumers

The consumer has no right to information in the consumer reporting agency's files on other individuals, because the disclosure must be limited to information "on the consumer." However, all information in the files of the consumer making the request must be disclosed, including information about another individual that relates to the consumer (e.g., concerning that individual's dealings with the subject of the consumer report).

9. Disclosure of Sources of Information

Consumer reporting agencies must disclose the sources of information, except for sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose. When it has used information from another consumer reporting agency, the other agency should be reported as a source.

10. Disclosure of Recipients of Consumer Reports

Consumer reporting agencies must maintain records of recipients of prior consumer reports sufficient to enable them to meet the FCRA's requirements that they disclose the identity of recipients of prior consumer reports. A consumer reporting agency that furnishes a consumer report directly to a report user at the request of another consumer reporting agency must disclose the identity of the user that was the ultimate recipient of the report, not the other agency that acted as an intermediary in procuring the report.

11. Disclosure of Recipients of Prescreened Lists

A consumer reporting agency must furnish to a consumer requesting file disclosure the identity of recipients of any prescreened lists that contained the consumer's name when submitted to creditors (or other users) by the consumer reporting agency.

Section 610—Conditions of Disclosure

"(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.

(b) The disclosures required under section 609 shall be made to the consumer—

- (1) in person if he appears in person and furnishes proper identification; or
- (2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the

telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in section 618 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumers."

1. Time of Disclosure

A consumer reporting agency must make disclosures during normal business hours, upon reasonable notice. However, the consumer reporting agency may waive reasonable notice, and the consumer may agree to disclosure outside of normal business hours. A consumer reporting agency may make in-person disclosure to consumers who have made appointments ahead of other consumers, because the disclosures are only required to be made "on reasonable notice."

2. Extra Conditions Prohibited

A consumer reporting agency may not add conditions not set out in the FCRA as a prerequisite to the required disclosure.

3. Manner of Disclosure

A consumer reporting agency may, with the consumer's actual or implied consent, meet its disclosure obligations by mail, in lieu of the in-person or telephone disclosures specified in the statute.

4. Disclosure in the Presence of Third Parties

When the consumer requests disclosure in a third party's presence, the consumer reporting agency may require that a consumer sign an authorization before such disclosure is made. The consumer may choose the

third party to accompany him or her for the disclosure.

5. Expense of Telephone Calls

A consumer reporting agency is not required to pay the telephone charge for a telephone interview with a consumer obtaining disclosure.

6. Qualified Defamation Privilege

The privilege extended by subsection 610(e) does not apply to an action brought by a consumer if the action is based on information not disclosed pursuant to sections 609, 610 or 615. A disclosure to a consumer's representative (e.g., based on the consumer's power of attorney) constitutes "information disclosed pursuant to section 609" and is thus covered by this privilege.

Section 611—Procedure in Case of Disputed Accuracy

"(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no

longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received."

1. Relation to Other Sections

This section sets forth procedures consumer reporting agencies must follow if a consumer conveys a dispute of the completeness or accuracy of any item of information in the consumer's file to the consumer reporting agency. Section 609 provides for disclosures by consumer reporting agencies to consumers, and section 610 sets forth conditions of disclosure. Section 612 permits a consumer reporting agency to impose charges for certain disclosures, including the furnishing of certain information to recipients of prior reports, as provided by section 611(d).

2. Proper Reinvestigation

A consumer reporting agency conducting a reinvestigation must make a good faith effort to determine the accuracy of the disputed item or items. At a minimum, it must check with the original sources or other reliable sources of the disputed information and inform them of the nature of the consumer's dispute. In reinvestigating and attempting to verify a disputed credit transaction, a consumer reporting agency may rely on the accuracy of a creditor's ledger sheets and need not require the creditor to produce documentation such as the actual signed sales slips. Depending on the nature of the dispute, reinvestigation and verification may require more than asking the original source of the disputed information the same question and receiving the same answer. If the original source is contacted for reinvestigation, the consumer reporting agency should at least explain to the source that the original statement has been disputed, state the consumer's position, and then ask whether the

source would confirm the information, qualify it, or accept the consumer's explanation.

3. Complaint of Insufficient File, or Lack of File

The FCRA does not require a consumer reporting agency to add new items of information to its file. A consumer reporting agency is not required to create new files on consumers for whom it has no file, nor is it required to add new lines of information about new accounts not reflected in an existing file, because the section permits the consumer to dispute only the completeness or accuracy of particular items of information in the file. If a consumer reporting agency chooses to add lines of information at the consumer's request, it may charge a fee for doing so.

4. Explanation of Extenuating Circumstances

A consumer reporting agency has no duty to reinvestigate, or take any other action under this section, if a consumer merely provides a reason for a failure to pay a debt (e.g., sudden illness or layoff), and does not challenge the accuracy or completeness of the item of information in the file relating to a debt. Most creditors are aware that a variety of circumstances may render consumers unable to repay credit obligations. Although a consumer reporting agency is not required to accept a consumer dispute statement that does not challenge the accuracy or completeness of an item in the consumer's file, it may accept such a statement and may charge a fee for doing so.

5. Reinvestigation of a Debt

A consumer reporting agency must reinvestigate if a consumer conveys to it a dispute concerning the validity or status of a debt, such as whether the debt was owed by the consumer, or whether the debt had subsequently been paid. For example, if a consumer alleges that a judgment reflected in the file as unpaid has been satisfied, or notifies a consumer reporting agency that a past due obligation reflected in the file as unpaid was subsequently paid, the consumer reporting agency must reinvestigate the matter. If a file reflects a debt discharged in bankruptcy without reflecting subsequent reaffirmation and payment of that debt, a consumer may require that the item be reinvestigated.

6. Status of a Debt

The consumer reporting agency must, upon reinvestigation, "record the current status" of the disputed item. This requires inclusion of any information

relating to a change in status of an ongoing matter (e.g., that a credit account had been closed, that a debt shown as past due had subsequently been paid or discharged in bankruptcy, or that a debt shown as discharged in bankruptcy was later reaffirmed and/or paid).

7. Dispute Conveyed to Party Other Than the Consumer Reporting Agency

A consumer reporting agency is required to take action under this section only if the consumer directly communicates a dispute to it. It is not required to respond to a dispute of information that the consumer merely conveys to others (e.g., to a source of information). (But see, however, discussion in section 607, item 3A, of consumer reporting agencies' duties to correct errors that come to their attention.)

8. Dispute Conveyed to the Consumer Reporting Agency by a Party Other Than the Consumer

A consumer reporting agency need not reinvestigate a dispute about a consumer's file raised by any third party, because the obligation under the section arises only where an "item of information in his file is disputed by the consumer."

9. Consumer Disclosures and Adverse Action Not Prerequisites to Reinvestigation Duty

A consumer reporting agency's obligation to reinvestigate disputed items is not contingent upon the consumer's having been denied a benefit or having asserted any rights under the FCRA other than disputing items of information.

10. Reasonable Period of Time

A consumer reporting agency is required to reinvestigate and record the current status of disputed information within a reasonable period of time after the consumer conveys the dispute to it. Although consumer reporting agencies are able to reinvestigate most disputes within 30 days, a "reasonable time" for a particular reinvestigation may be shorter or longer depending on the circumstances of the dispute. For example, where the consumer provides documentary evidence (e.g., a certified copy of a court record to show that a judgment has been paid) when submitting the dispute, the creditor may require a shorter time to reinvestigate. On the other hand, where the dispute is more complicated than normal (e.g., the consumer alleges in good faith that a creditor has falsified its report of the consumer's account history because of a

personal grudge), the "reasonable time" needed to conduct the reinvestigation may be longer.

11. Frivolous or Irrelevant

The mere presence of contradictory information in the file does not provide the consumer reporting agency "reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant." A consumer reporting agency must assume a consumer's dispute is bona fide, unless there is evidence to the contrary. Such evidence may constitute receipt of letters from consumers disputing all information in their files without providing any allegations concerning the specific items in the files, or of several letters in similar format that indicate that a particular third party (e.g., a "credit repair" operator) is counselling consumers to dispute all items in their files, regardless of whether the information is known to be accurate. The agency is not required to repeat a reinvestigation that it has previously conducted simply because the consumer reiterates a dispute about the same item of information, unless the consumer provides additional evidence that the item is inaccurate or incomplete, or alleges changed circumstances.

12. Deletion of Accurate Information That has not Been Disputed

The consumer reporting agency is not required to delete accurate information that could not be verified upon reinvestigation, if it has not been "disputed by a consumer." For example, if a creditor deletes adverse information from its files with the result that information could not be reverified if disputed, it is still permissible for a consumer reporting agency to report it (subject to the obsolescence provisions of section 605) until it is disputed.

13. Consumer Dispute Statements on Multiple Items

A consumer who disputes multiple items of information in his file may submit a one hundred word statement as to each disputed item.

14. Conveying Dispute Statements to Recipients of Subsequent Reports.

A consumer reporting agency may not merely tell the recipient of a subsequent report containing disputed information that the consumer's statement is on file but will be provided only if requested, because subsection (c) requires the agency to provide either the statement or "a clear and accurate codification or summary thereof."

Section 612—Charges for Certain Disclosures

"A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to persons designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified."

1. Irrelevance of Subsequent Grant of Credit or Reason For Denial

A consumer denied credit because of a consumer report from a consumer reporting agency has the right to a free disclosure from that agency within 30 days of receipt of the section 615(a) notice, even if credit was subsequently granted or the basis of the denial was that the references supplied by the consumer are too few or too new to appear in the credit file.

2. Charge for Reinvestigation Prohibited

This section does not permit consumer reporting agencies to charge for making the reinvestigation or following other procedures required by section 611 (a)-(c).

3. Permissible Charges for Services Requested by Consumers

A consumer reporting agency may charge fees for creating files on consumers at their request, or for other services not required by the FCRA that are requested by consumers.

Section 613—Public Record Information for Employment Purposes

"A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported."

1. Relation to Other Sections

A consumer reporting agency that complies with section 613(1) must also follow reasonable procedures to assure maximum possible accuracy, as required by section 607(b).

2. Alternate Methods of Compliance

A consumer reporting agency that furnishes public record information for employment purposes must comply with either subsection (1) or (2), but need not comply with both.

3. Information From Another Consumer Reporting Agency

If a consumer reporting agency uses information or reports from other consumer reporting agencies in a report for employment purposes, it must comply with this section.

4. Method of Providing Notice

A consumer reporting agency may use first class mail to provide the notice required by subsection (1).

5. Waiver

The procedures required by this section cannot be waived by the consumer to whom the report relates.

Section 614—Restrictions on Investigative Consumer Reports

"Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished."

Section 615—Requirements on Users of Consumer Reports

(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b)."

1. Relation to Other Sections and Regulation B

Sections 606 and 615 are the only two sections that require users of reports to make disclosures to consumers. Section 606 applies only to users of

"investigative consumer reports." Creditors should not confuse compliance with section 615(a), which only requires disclosure of the name and address of the consumer reporting agency, and compliance with the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* and Regulation B, 12 C.F.R. 202, which require disclosure of the reasons for adverse action. Compliance with section 615(a), therefore, does not constitute compliance with Regulation B.

2. Limited Scope of Requirements

The section does not require that creditors disclose their credit criteria or standards or that employees furnish copies of personnel files to former employees. The section does not require that the user provide any kind of advance notification to consumers before a consumer report is obtained. (See section 606 regarding notice of investigative consumer reports.)

3. Method of Disclosure

The disclosures required by this section need not be made in writing. However, users will have evidence that they have taken reasonable steps to comply with this section if they provide written disclosures and retain copies for at least two years, the applicable statute of limitations for most civil liability actions under the FCRA.

4. Adverse Action Based on Direct Information

This section does not require that a user send any notice to a consumer concerning adverse action regarding that consumer that is based neither on information from a consumer reporting agency nor on information from a third party. For example, no disclosures are required concerning adverse action based on information provided by the consumer in an application or based on past experience in direct transactions with the consumer.

5. Creditors Using "Prescreened" Mailing Lists

A creditor is not required to provide notices regarding consumer reporting agencies that prepare mailing lists by "prescreening" because they do not involve consumer requests for credit and credit has not been denied to consumers whose names are deleted from a list furnished to the agency for use in this procedure. See discussion of "prescreening," under section 604(3) (A), item 6, *supra*.

6. Applicability to Users of Motor Vehicle Reports

An insurer that refuses to issue a policy, or charges a higher than normal

premium, based on a motor vehicle report is required to comply with subsection(a).

7. Securities and Insurance Transactions

A consumer report user that denies credit to a consumer in connection with a securities transaction must provide the required notice, because the denial is of "credit * * * for personal purposes," unless the consumer engages in such transactions as a business.

8. Denial of Employment

An employer must provide the notice required by subsection (a) to an individual who has applied for employment and has been rejected based on a consumer report. However, an employer is not required to send a notice when it decides not to offer a position to an individual who has not applied for it, because in this case employment is not "denied." (See discussion in section 606, item 4, *supra*.)

9. Adverse Action Involving Credit

A creditor must provide the required notice when it denies the consumer's request for credit (including a rejection based on a scoring system, where a credit report received less than the maximum number of points possible and caused the application to receive an insufficient score), denies the consumer's request for increased credit, grants credit in an amount less than the consumer requested, or raises the charge for credit.

10. Adverse Action Not Involving Credit, Insurance or Employment

The Act does not require that a report user provide any notice to consumers when taking adverse action not relating to credit, insurance or employment. For example, a landlord who refuses to rent an apartment to a consumer based on credit or other information in a consumer report need not provide the notice. Similarly, a party that uses credit or other information in a consumer report as a basis for refusing to accept payment by check need not comply with this section. Checks have historically been treated as cash items, and thus such refusal does not involve a denial of credit, insurance or employment.

11. Adverse Action Based on Non-derogatory Adverse Information

A party taking adverse action concerning credit or insurance or denying employment, "wholly or partly because of information contained in a consumer report," must provide the required notice, even if the information is not derogatory. For example, the user must give the notice if the denial is

based wholly or partly on the absence of a file or on the fact that the file contained insufficient references.

12. Name and Address of the Consumer Reporting Agency

The "section 615(a)" notice must include the consumer reporting agency's street address, not just a post office box address.

13. Agency To Be Identified

The consumer report user should provide the name and address of the consumer reporting agency from which it obtained the consumer report, even if that agency obtained all or part of the report from another agency.

14. Denial Based Partly on a Consumer Report

A "section 615(a)" notice must be sent even if the adverse action is based only partly on a consumer report.

15. Denial of Credit Based on Information From "Third Parties"

Subsection (b) imposes requirements on a creditor when it denies (or increases the charge for) credit for personal, family or household purposes involving a consumer, based on information from a "third party" source, which means a source *other* than the consumer reporting agency, the creditor's own files, or the consumer's application (*e.g.*, creditor, employer, landlord, or the public record). Where a creditor denies a consumer's application based on information obtained directly from another lender, even if the lender's name was furnished to the creditor by a consumer reporting agency, the creditor must give a "third party" disclosure.

16. Substance of Required "Third Party" Disclosures

When the adverse action is communicated to the consumer, the creditor must clearly and accurately disclose to the consumer his or her right to make a written request for the disclosure of the nature of the third party information that led to the adverse action. Upon timely receipt of such a request, however, the creditor need disclose only the nature of the information that led to the adverse action (*e.g.*, history of late rent payments or bad checks); it need not identify the source that provided the information or the criteria that led to the adverse action. A creditor may comply with subsection (b) by providing a statement of the nature of the third party information that led to the denial when it notifies the consumer of the denial. A statement of principal, specific reasons

for adverse action based on third party information that is sufficient to comply with the requirements of the Equal Credit Opportunity Act (e.g., "unable to verify employment") is sufficient to constitute disclosure of the "nature of the information" under subsection (b).

Section 616—Civil Liability for Willful Noncompliance

Section 616 permits consumers who sue and prove willful noncompliance with the Act to recover actual damages, punitive damages, and the costs of the action, together with reasonable attorney's fees.

Section 617—Civil Liability for Negligent Noncompliance

Section 617 permits consumers who sue and prove negligent noncompliance with the Act to recover actual damages and the costs of the action, together with reasonable attorney's fees.

Section 618—Jurisdiction of Courts; Limitation of Actions

Section 618 provides that any action brought under section 616 or section 617 may be brought in any United States district court or other court of competent jurisdiction. Such suit must be brought within two years from the date on which liability arises, unless a defendant has materially and willfully misrepresented information the Act requires to be disclosed, and the information misrepresented is material to establishment of the defendant's liability. In that event, the action must be brought within two years after the individual discovers the misrepresentation.

Section 619—Obtaining Information Under False Pretense

Section 619 provides criminal sanctions against any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

1. Relation to Other Sections

The presence of this provision does not excuse a consumer reporting agency's failure to follow reasonable procedures, as required by section 607(a), to limit the furnishing of consumer reports to the purposes listed under section 604.

Section 620—Unauthorized Disclosures by Officers or Employees

Section 620 provides criminal sanctions against any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an

individual from the agency's file to a person not authorized to receive it.

Section 621—Administrative Enforcement

This section gives the Federal Trade Commission authority to enforce the Act with respect to consumer reporting agencies, users of reports, and all others, except to the extent that it gives enforcement jurisdiction specifically to some other agency. Those excepted from the Commission's enforcement jurisdiction include certain financial institutions regulated by Federal agencies or boards, Federal credit unions, common carriers subject to acts to regulate commerce, air carriers, and parties subject to the Packers and Stockyards Act, 1921.

1. General

The Commission can use its cease-and-desist power and other procedural, investigative and enforcement powers which it has under the FTC Act to secure compliance, irrespective of commerce or any other jurisdictional tests in the FTC Act.

2. Geographic Coverage

The Commission's authority encompasses the United States, the District of Columbia, the Commonwealth of Puerto Rico, and all United States territories but does not extend to activities outside those areas.

3. Status of Commission Commentary and Staff Interpretations

The FCRA does not give any Federal agency authority to promulgate rules having the force and effect, of statutory provisions. The Commission has issued this Commentary, superseding the eight formal Interpretations of the Act (16 CFR 600.1-600.8), previously issued pursuant to § 1.73 of the Commission's Rules, 16 CFR 1.73. The Commentary does not constitute substantive rules and does not have the force or effect of statutory provisions. It constitutes guidelines to clarify the Act that are advisory in nature and represent the Commission's views as to what particular provisions of the Act mean. Staff opinion letters constitute staff interpretations of the Act's provisions, but do not have the force or effect of statutory provisions and, as provided in § 1.72 of the Commission's Rules, 16 CFR 1.72, do not bind the Commission.

Section 622—Relation to State Laws

"This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of

any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency."

1. Basic Rule

State law is pre-empted by the FCRA only when compliance with inconsistent state law would result in violation of the FCRA.

2. Examples of Statutes that are not Pre-empted

A state law requirement that an employer provide notice to a consumer before ordering a consumer report, or that a consumer reporting agency must provide the consumer with a written copy of his file, would not be pre-empted, because a party that complies with such provisions would not violate the FCRA.

3. Examples of Statutes that are Pre-empted

A state law authorizing grand juries to compel consumer reporting agencies to provide consumer reports, by means of subpoenas signed by a court clerk, is pre-empted by the FCRA's requirement that such reports be furnished only pursuant to an "order of the court" signed by a judge (section 604(1)), or furnished for other purposes not applicable to grand jury subpoenas (section 604 (2)-(3)), and by section 607(a). A state statute requiring automatic disclosure of a deletion or dispute statement to every person who has previously received a consumer report containing the disputed information, regardless of whether the consumer designates such persons to receive this disclosure, is pre-empted by section 604 of the FCRA, which permits disclosure only for specified, permissible purposes and by section 607(a), which requires consumer reporting agencies to limit the furnishing of consumer reports to purposes listed under section 604. Absent a specific designation by the consumer, the consumer reporting agency has no reason to believe all past recipients would have a present, permissible purpose to receive the reports.

4. Statute Providing Access for Enforcement Purposes

A state "little FCRA" that permits state officials access to a consumer reporting agency's files for the purpose of enforcing that statute just as Federal agencies are permitted access to such files under the FCRA, is not pre-empted by the FCRA.

(Information collection requirements in this appendix approved by the Office of Management and Budget under control number 3084-0091)

The FCRA was enacted October 26, 1970, and became effective April 24, 1971.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-10364 Filed 5-3-90; 8:45 am]

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May 4, 1990

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 874

**Ear, Nose, and Throat Devices; Effective
Date of the Requirement for Premarket
Approval for the Endolymphatic Shunt
Tube With Valve; Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 874

[Docket No. 88N-0244]

Ear, Nose, and Throat Devices; Effective Date of the Requirement for Premarket Approval for the Endolymphatic Shunt Tube With Valve

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the endolymphatic shunt tube with valve, a medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements, and the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information. This action is a followup to FDA's notice of intent of January 6, 1989 (54 FR 550).

DATES: Comments by July 3, 1990; requests for a change in classification by May 21, 1990. FDA intends that if a final rule is issued, based on this proposed rule, PMA's will be required to be submitted within 90 days after the date of promulgation of that final rule.

ADDRESSES: Written comments or requests for a change in classification to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: class I (general controls), class II (performance standards), and class III (premarket

approval). As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), establish a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that the PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed (see 21 CFR 874.3).

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2) of the act provides that if FDA receives a request for a

change in the classification of the device within 15 days of the publication of the notice of proposed rulemaking to require premarket approval, FDA shall, within 60 days of the publication of the proposal, consult with the appropriate FDA advisory committee and publish a Federal Register notice either denying the request for a change in the classification of the device or announcing the agency's intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding to reclassify the device under section 513(e) of the act, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule to require premarket approval and consideration of any comments received, promulgate a final rule to require premarket approval of the device, or publish a notice withdrawing the proposed rule and terminating the proceeding. If FDA withdraws the proposed rule and terminates the proceeding, FDA is required to initiate a proceeding to reclassify the device under section 513(e) of the act, unless the reason for withdrawing the proposed rule and terminating the proceeding is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act (21 U.S.C. 351(f)) requires that a PMA or a notice of completion of a PDP for the device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations.

If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation

of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

II. Classification of Endolymphatic Shunt Tube With Valve

In the Federal Register of November 6, 1986 (51 FR 40378), FDA issued a final rule (21 CFR 874.3850) classifying the endolymphatic shunt tube with valve into class III. The preamble to the proposal to classify the device (47 FR 3280) included the recommendation of the Ear, Nose, and Throat Devices Panel (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the endolymphatic shunt tube with valve. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or notice of completion of a PDP) could be required was June 28, 1989, or 90 days after promulgation of a separate regulation requiring premarket approval of the device, whichever occurs later.

In the Federal Register of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using those factors, FDA has determined that the endolymphatic shunt tube with valve identified in 21 CFR 874.3850 has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the endolymphatic shunt tube with valve have an approved PMA or a PDP that has been declared completed.

A. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the endolymphatic shunt tube with valve on or before 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the endolymphatic shunt tube during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that " * * * the continued availability of the device is necessary for the public health." (See 21 CFR 874.3).

FDA intends that, under 21 CFR 812.2(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any endolymphatic shunt tube with valve which is: (1) Not legally on the market on or before that date; or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date; or (3) for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the endolymphatic shunt tube with valve is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

B. Description of Device

The endolymphatic shunt tube with valve is a device that consists of a pressure-limiting valve associated with a tube intended to be implanted in the inner ear to relieve the symptoms of vertigo and hearing loss due to endolymphatic hydrops or Meniere's disease. The device directs excess endolymph from the end of the endolymphatic system into the mastoid cavity where resorption occurs. The function of the pressure-limiting inner ear valve is to maintain the physiologically normal endolymphatic pressure and to insure a unidirectional flow of endolymph.

The proposed rule to require premarket approval of the endolymphatic shunt tube with valve applies to devices that were being commercially distributed before May 28, 1976, and to devices that were introduced into commercial distribution since that date which have been found to be substantially equivalent to the endolymphatic shunt tube with valve.

C. Proposed Findings With Respect to Risk and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the endolymphatic shunt tube with valve to have an approved PMA or a declared complete PDP; and (2) the benefits to the public from the use of the device.

D. Degree of Risk

The endolymphatic shunt tube with valve is an implant which is inserted into the endolymphatic duct. After reviewing the literature and a presentation by John Newkirk, the Ear, Nose, and Throat Devices Panel recommended (47 FR 3303) that the endolymphatic shunt tube with valve be classified in class III. In the final rule (51 FR 40378 at 40391), FDA classified the generic type of device into class III as proposed. In that regulation, FDA also classified the generic type of device endolymphatic shunt into class II (21 CFR 874.3820).

In the preamble to that final rule, the agency noted that the endolymphatic shunt tube with valve is a relatively new device that is intended to be implanted. The valve is purported to maintain a physiologically normal endolymphatic pressure, yet little is known about normal pressure within the endolymphatic sac. If the valve becomes inoperative or clogs, FDA believes that a significant risk to health would result from the buildup of fluid pressure in the

inner ear. Additional risks to health, such as infection, are presented by any surgical procedure to correct a defective valve. Further, the Panel determined that a performance standard would not provide reasonable assurance of safety and effectiveness. Finally, the Panel felt that the indication for use of the device, i.e., to relieve vertigo, is of substantial importance in preventing impairment of human health.

Since the time of the Panel recommendation, the emphasis in the surgical treatment of intractable Meniere's disease has evolved from one of symptomatic relief, i.e., relief from vertigo, to the preservation and improvement of hearing. The device has been successfully left in place for as long as 10 years to prevent vertigo and progressive loss of hearing which typify Meniere's disease refractory to medical treatment (Ref. 39). Currently, FDA has determined that the following are the significant risks associated with the use of the endolymphatic shunt tube with valve:

1. Compromise of Inner Ear Function

The most serious complication of surgical implantation of the endolymphatic shunt tube with valve is profound impairment of hearing in the involved ear immediately subsequent to surgery. Arenberg (Ref. 21) reports 12 cases of iatrogenic deaf ears subsequent to the first 725 implant operations, an incidence of 1.6 percent. Half of the deaf ears were the consequence of labyrinthitis and half due to the surgical approach and procedure which damaged a semicircular canal or the endolymphatic vestibule.

Huang (Ref. 28) reports 2 cases of iatrogenic deaf ears subsequent to 87 implantation, an incidence of 2.3 percent, and suggests that, should the patient have only one hearing ear or a better hearing ear, use of this method should be approached with caution. Huang also described the hearing loss to labyrinthitis or damage to vestibular structures. The device itself has not been implicated as a direct cause of hearing loss in any of the literature (Refs. 21, 28, 39, and 46).

2. Clogged or Plugged Valves

Earlier reports by Arenberg (Ref. 15) on the results of revision surgery on patients where symptoms were not controlled by the original surgery indicated that the valve was plugged in 12 of 400 devices, or 3 percent of the total. Most of the plugged valves occurred in devices anchored by temporalis fascia, a method of anchoring the device, which has been discontinued.

Obstruction of the outflow of endolymph has been reported after implantation of other endolymphatic shunts such as the silastic coil and House's endolymphatic shunt tube without valve (Ref. 27), and clogging is not a problem unique to the endolymphatic shunt tube with valve. The consequence of clogged or plugged endolymphatic shunt tubes appears to be failure to control vertigo, fluctuating hearing loss, and tinnitus.

None of the authors who observed clogged or plugged endolymphatic shunt tubes with valves during revision surgery reported any injury to the inner ear. The determination of lack of injury to the inner ear is based upon indirect evidence such as audiological testing and the evaluation of vertigo (Refs. 15, 17, 18, and 27). However, the frequency of occurrence of clogging of the shunt due to the presence of a valve must be investigated to determine if the endolymphatic shunt tube with valve presents a potential unreasonable risk of illness or injury.

3. Infections and Morbidity

No deaths or meningitis due to implantation of the endolymphatic shunt tube with valve have been reported. Labyrinthitis (0.82 percent) and postoperative wound infection (1.10 percent) have been reported (Refs. 21 and 28). Transient facial paresis with essentially full recovery occurred in 0.69 percent of implants (Ref. 21).

E. Benefits of the Device

Widespread application in the literature of the 1985 American Academy of Otolaryngology—Head and Neck Surgery (AAO-HNS), *Guidelines for Reporting Results in Meniere's Disease* (Ref. 23 and 35) or the 1972 AAO-HNS: *Meniere's Disease: Criteria for Diagnosis and Evaluation of Therapy* (Ref. 2) facilitates summarization of the results of several recent studies.

Vertigo, the historical focus of endolymphatic sac surgery, is eliminated in 72 percent to 88.9 percent of all patients in whom the endolymphatic shunt tube with valve (Refs. 21, 28, 37, and 44 through 46) has been implanted. The vertigo-associated disability is improved in 86 percent to 92.1 percent of patients implanted with the device (Ref. 26). However, Jackson et al., have achieved only a 46 percent success rate with the device (Ref. 29).

Improvement of hearing, assessed by pure tone audiograms, has been reported in 17.2 percent to 42 percent of the ears implanted with the endolymphatic shunt tube with valve, and hearing was sustained (neither

better or worse) in 50 to 59 percent (Refs. 28, 45, and 46). Improvement in speech discrimination has also been reported (Refs. 28, 45, and 46). Enhanced high-frequency hearing gains of from 25 decibels to 48 decibels have also been observed (Refs. 28, 45, and 46). However, the evaluation of a preliminary study, reported by Jackson et al., indicates hearing improvement in only 19 percent of their patients, even after specific training in the implantation procedure of the device (Ref. 29).

Tinnitus and aural fullness are symptoms difficult to quantify, so that any assessment includes an element of subjective evaluation. Tinnitus has been reported to be eliminated or improved in 41.5 percent to 62 percent in ears implanted with the device (Refs. 21, 45, and 46). The same reports indicate an elimination or decrease of aural pressure in 51.4 percent to 75 percent of the patients.

F. Discussion of Risks and Benefits

According to some reports in the recent literature, the endolymphatic shunt tube with valve provides the best chance of significant hearing improvement to patients with vertigo or Meniere's disease uncontrolled by medical (nonsurgical) therapy (Refs. 21 and 46). Surgical intervention is indicated in only the 15 percent of Meniere's disease patients who fail to respond to medical (nonsurgical) treatment (Ref. 21). The emphasis on the treatment of Meniere's disease, while still the subject of controversy in the literature, has shifted from relief of vertigo to the preservation of hearing. Surgical procedures for Meniere's disease are divided into auditory-sparing or conservative procedures and hearing-forfeiting or destructive procedures (Ref. 41). Endolymphatic sac surgery is classified as conservative while a labyrinthectomy is classified as destructive. Fear of compromising of the potential use of a cochlear implant and the realization that the incidence of bilateral Meniere's disease is as high as 30 percent mitigate against the use of destructive procedures (Refs. 34 and 46). A survey of the 1985 (Ref. 33) and 1972 (Ref. 2) criteria for the evaluation and reporting of Meniere's disease published by the AAO-HNS reveals a definite emphasis on the positive effect of any treatment on hearing loss. The natural history of Meniere's disease is typified by a progressive loss of cochlear function to a hearing threshold of 50 to 60 decibels and a speech discrimination capacity of 50 to 60 percent (Ref. 40). The shift in emphasis is supported by

histopathologic studies which clearly correlate endolymphatic hydrops and Meniere's disease with the progressive destruction of hearing (Refs. 1, 22 through 24, 32, 33, 38, 37, and 42).

Wright (Ref. 45) states that the implantation of the endolymphatic shunt tube with valve is the only type of endolymphatic sac surgery which demonstrates large hearing gains albeit in a minority of patients. Wright reported average increases of 42 and 48 decibels in two cases (Ref. 45).

In a later study, Wright notes gains of 25 decibels or more at 3,000 hertz, an observation limited to patients with the endolymphatic shunt tube with valve (Ref. 45). Wright speculates that one explanation may be the normal endolymphatic pressure fostered by the valve as compared to the "decompressed" endolymphatic pressure of simple sac surgery (Ref. 45). The endolymphatic shunt tube with valve, a modification of the Krupin eye valve, (Ref. 30), maintains 9 to 13 millimeters of mercury pressure (1.2 to 1.7 pascals); however, the actual normal pressure of endolymphatic fluid is a matter of controversy (Refs. 3, 4, 38, and 42).

Allen (Ref. 3), upon reviewing the literature focusing on alteration of labyrinthine fluid pressure, including his own work, believes that the ideal opening pressure of the unidirectional valve should be the same as the cisterna magna pressure in the recumbent position, approximately 12 centimeters of water (1.2 pascals). In a comparison of the endolymphatic shunt tube with valve to other surgical methods, Huang (Ref. 28) indicates "much greater hearing gains than are usually achieved using alternative surgical procedures." Huang supports Arenberg's theory that the endolymphatic shunt tube with valve maintains normal intralabyrinthine pressure which enhances cochlear function recovery (Ref. 28).

Arenberg (Refs. 5 through 21) has consistently reported greater hearing gains with the valved device than alternative endolymphatic sac surgical procedures and advocates his conservative surgical method as the procedure of choice, especially over destructive surgery (Ref. 21), such as a labyrinthectomy which forfeits hearing or even selective vestibular nerve section which spares the cochlear nerve. Selective vestibular nerve section, an intracranial procedure, does not address the problem of progressive hearing loss but does achieve control of vertigo in 90 percent of patients (Ref. 29). Further, Arenberg emphasizes careful patient selection indicating that a positive glycerol (dehydration test) is an

effective prediction of hearing improvement, but not for predicting elimination of vertigo (Refs. 21 and 39).

Lehrer et al. report that secondary hydrops, associated with perilymphatic fistulas, has also been improved by implantation of the endolymphatic shunt tube with valve (Ref. 31). However, a careful analysis of the results of all surgical endolymphatic sac methods indicates that they are all similarly effective in controlling vertigo, but not for hearing improvement (Refs. 27, 28, and 46). A preliminary study by Jackson et al. suggests that no difference in control of vertigo and in prevention of further impairment of hearing results from implantation of the endolymphatic shunt tube with valve or other endolymphatic sac surgical procedures (Ref. 29). A recently published evaluation of 678 endolymphatic shunt procedures, which included endolymphatic-subarachnoid shunts, endolymphatic-mastoid shunts, and the endolymphatic shunt tube with valve, reports no significant difference between these procedures in the control of vertigo or stabilization of hearing (Ref. 25). Despite the potential benefits of the device as stated above, FDA notes that the device is relatively new, little information is available about its use, and the device presents serious potential risks.

FDA believes that sufficient information may exist regarding the risks associated with the device, but the information must be assembled in such a way as to enable FDA to determine if the information provides reasonable assurance of the safety and effectiveness of the device for its intended use.

FDA has tentatively concluded, therefore, that the endolymphatic shunt tube with valve should undergo premarket approval to determine whether the risks of using the device are adequately balanced by its benefits. Applicants should submit a PMA in accordance with FDA's "Premarket Approval (PMA) Manual" and "Guidance for the Evaluation of the Endolymphatic Shunt Tube With Valve" (available upon request from the Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, Attn: David A. Segerson).

The PMA should contain a detailed discussion with supporting preclinical and clinical studies of: (1) All risks that have been identified in this proposed rule; and (2) the effectiveness of the device. In addition, the submission should contain all data and information on: (1) Risks known to the applicant that

have not been identified in this proposed rule; (2) summaries of all existing preclinical and clinical data from investigations on the safety and effectiveness of the device for which premarket approval is sought; and (3) the results of clinical investigations and nonclinical studies conducted by or for the applicant.

III. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDF for a device, FDA is required by section 515(b)(2)(A) (i) through (iv) of the act and 21 CFR 860.132 of FDA's regulations governing classification of devices to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification.

A request for a change in the classification of the endolymphatic shunt tube with valve is to be in the form of a reclassification petition containing the information required by 21 CFR 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by May 21, 1990.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in 21 CFR 860.123(b)(1). If a timely request for a change in classification of the endolymphatic shunt tube with valve is submitted, the agency will by July 3, 1990, after consultation with the appropriate FDA advisory committee and by an order published in the Federal Register, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

IV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Albers, F.W., J.E. Veldman, and E.H. Huizing, "Early Hair Cell Loss in Experimental Hydrops," *Annals of Otolaryngology, Rhinology, and Laryngology*, 96:282-285, 1987.
2. Alford, B.A., "Report of Subcommittee on Equilibrium and Its Measurements. Meniere's Disease: Criteria for Diagnosis and Evaluation of Therapy," *Transaction of the American Academy of Ophthalmological Society*, 96:1462-1464, 1972.

3. Allen, G.W., "Clinical Implications of Experiments on Alteration of the Labyrinthine Fluid Pressures," *Otolaryngologic Clinics of North America*, 16:3-19, 1983.
4. Allen, G.W., "Fluid Flow in the Cochlear Aqueduct and Cochlea-Hydrodynamic Considerations in Perilymph Fistula, Stapes Gusher, and Secondary Endolymphatic Hydrops," *American Journal of Otolaryngology*, 8:319-322, 1987.
5. Arenberg, I.K., and G.J. Spector, "Endolymphatic Sac Surgery for Hearing Conservation in Meniere's Disease," *Archives of Otolaryngology—Head and Neck Surgery*, 103:268-270, 1977.
6. Arenberg, I.K., J. Stahle, H. Wilbrand, and J.B. Newkirk, "Unidirectional Inner Ear Valve Implant for Endolymphatic Sac Surgery in Meniere's Disease," *Archives of Otolaryngology*, 104:694-704, 1978.
7. Arenberg, I.K., J. Stahle, M.E. Glasscock, and G.E. Shambaugh, "Endolymphatic Sac Valve Implant Surgery. I: The Technique," *Laryngoscope*, 89 (Supp. 17): 1-20, 1979.
8. Arenberg, I.K., J.B. Newkirk, and J. Stahle, "Endolymphatic Sac Valve Implant Surgery. II: The Unidirectional Inner Ear Valve Implant," *Laryngoscope*, 89 (Supp. 17): 21-25, 1979.
9. Arenberg, I.K., "Endolymphatic Sac Valve Implant Surgery. III: Preliminary Results in 61 Cases," *Laryngoscope*, 89 (Supp. 17): 26-39, 1979.
10. Arenberg, I.K., and J. Stahle, "Endolymphatic Sac Valve Implant Surgery. Staging the Aural Aspects of Meniere's Disease," *Laryngoscope*, 89 (Supp. 17): 40-47, 1979.
11. Arenberg, I.K., "Endolymphatic Sac Valve Implant Surgery. V: Experiences with Reporting of Treatment in Meniere's Disease," *Laryngoscope*, 89 (Supp. 17): 48-53, 1979.
12. Arenberg, I.K., "Abnormalities, Congenital Anomalies and Unusual Anatomic Variations of the Endolymphatic Sac and Vestibular Aqueduct: Clinical, Surgical and Radiographic Correlations," *American Journal of Otolaryngology*, 2:368-386, 1981.
13. Arenberg, I.K., and J. Stahle, "Unidirectional Inner Ear Valve Implants: A Nondestructive Alternative to Labyrinthectomy in Meniere's Disease," *American Journal of Otolaryngology*, 3:9-10, 1981.
14. Arenberg, I.K., and J. Stahle, "Endolymphatic Sac Operations for Meniere's Disease. A Comparison of the Pressure Sensitive Unidirectional Inner Ear Valve and Silastic Sheeting in Patients with a Minimum One Year Follow-Up," *American Journal of Otolaryngology*, 2:329-334, 1981.
15. Arenberg, I.K., and J.J. Balkany, "Prevention of Complications and Failures in Endolymphatic System Surgery," *Otolaryngologic Clinics of North America*, 15:869-882, 1982.
16. Arenberg, I.K., "Endolymphatic Hypertension and Hydrops in Meniere's Disease. Current Perspective," *American Journal of Otolaryngology*, 4:52-65, 1982.
17. Arenberg, I.K., "The Fine Points of Valve Implant Surgery for Hydrops: An Update," *American Journal of Otolaryngology*, 3:359-374, 1982.
18. Arenberg, I.K., "Revision Endolymphatic Sac and Duct Surgery for Recurrent Meniere's Disease and Hydrops: Failure Analysis and Technical Aspects," *Laryngoscope*, 92:1279-1284, 1982.
19. Arenberg, I.K., D.H. Norback, and G.E. Shambaugh, "Ultrastructural Analysis of Endolymphatic Sac Biopsies," *Archives of Otolaryngology*, 108:292-298, 1982.
20. Arenberg, I.K., S.A. Zoller, and S.M. Van de Water, "The Results of the First 300 Consecutive Endolymphatic System-Mastoid Shunts with Valve Implants for Hydrops," *Otolaryngologic Clinics of North America*, 16:153-174, 1983.
21. Arenberg, I.K., "Results of Endolymphatic Sac to Mastoid Shunt Surgery for Meniere's Disease Refractory to Medical Therapy," *American Journal of Otolaryngology*, 8:335-344, 1987.
22. Celestino, D., Chairman, "Round Table: Meniere's Disease. Critical Review of Meniere's Disease," *Acta Otorhinolaryngologica Italica*, 5:277-336, 1985.
23. Committee on Hearing and Equilibrium, "Meniere's Disease: Criteria for Diagnosis and Evaluation of Therapy for Reporting," *Archives of Otolaryngology—Head and Neck Surgery Bulletin*, July 6 and 7, 1985.
24. Deelen, G.W. van, P.R. Ruding, J.E. Velman, E.H. Huizing, and G.F. Smoorenburg, "Electrocochleographic Study of Experimentally Induced Endolymphatic Hydrops," *Archives of Otolaryngology—Head and Neck Surgery*, 224:167-173, 1987.
25. Glasscock M.E., C.G. Jackson, D.S. Poe, and G.D. Johnson, "What I Think of Sac Surgery in 1989," *American Journal of Otolaryngology*, 10:230-233, 1989.
26. Hallpike, C.S. and H. Cairns, "Observations on the Pathology of Meniere's Syndrome," *Journal of Laryngology and Otolaryngology*, 53:625-655, 1938.
27. Huang, T.S., and C.C. Lin, "Endolymphatic Sac Surgery for Meniere's Disease: A Composite Study of 339 Cases," *Laryngoscope*, 95:1082-1086, 1985.
28. Huang, T.S., "Valve Implants Compared to Other Surgical Methods," *American Journal of Otolaryngology*, 8:301-305, 1987.
29. Jackson, G.C., J.R. Dickins, M.E. Glasscock, M.H. Fritsch, S.S. Graham, and E.A. Dimitrov, "Endolymphatic Mastoid Shunt Surgery Using the Denver Inner Ear Shunt," *Otolaryngology—Head and Neck Surgery*, 99:282-285, 1988.
30. Krupin, T., S. Podos, B. Becker, and J.B. Newkirk, "Valve Implants in Filtering Surgery," *American Journal of Ophthalmology*, 81:232-235, 1976.
31. Lehrer, J.F., A.U. Quraishi, and D.C. Poole, "The Role of Endolymphatic Sac Surgery in the Management of Secondary Endolymphatic Hydrops Associated with Perilymphatic Fistulas: Preliminary Observations," *American Journal of Otolaryngology*, 8:93-95, 1987.
32. Nadol, J.B., and A.R. Thornton, "Ultrastructural Findings in a Case of Meniere's Disease," *Annals of Otolaryngology, Rhinology, and Laryngology*, 96:449-454, 1987.
33. Okuno, T., and I. Sando, "Localization, Frequency and Severity of Endolymphatic Hydrops and the Pathology of the Labyrinthine Membrane in Meniere's Disease," *Annals of Laryngology*, 96:438-445, 1987.
34. Paparella, M.M., and H. Sajjadi, "Endolymphatic Sac Enhancement," *American Journal of Otolaryngology*, 8:294-300, 1987.
35. Pearson, B.W., and D.E. Brackman, "Committee on Hearing and Equilibrium Guidelines for Reporting Treatment Results in Meniere's Disease," *Otolaryngology—Head and Neck Surgery*, 93:579-591, 1985.
36. Portmann, M., "The Portmann Procedure After Sixty Years," *American Journal of Otolaryngology*, 8:271-274, 1987.
37. Ruding, P.R., J.E. Veldman, G.W. Van Deelen, G.F. Smoorenburg, and E.H. Huizing, "Histopathological Study of Experimentally Induced Endolymphatic Hydrops with Emphasis on Reissner's Membrane," *Archives of Otolaryngology—Head and Neck Surgery*, 244:174-179, 1987.
38. Salt, A.N., and R. Thalmann, "New Concepts Regarding the Volume Flow of Endolymph and Perilymph," *Advances in Oto-Rhino-Laryngology*, 37:11-17, 1987.
39. Stahle, J., and I.K. Arenberg, "Ten Year Follow-up on the First Five Inner Ear Valve Implants for Intractable Vertigo in Sweden," *American Journal of Otolaryngology*, 8:287-293, 1987.
40. Stahle, J., U. Friberg, and Svedberg, "Long-Term Progression of Meniere's Disease," *American Journal of Otolaryngology*, 10:170-173, 1989.
41. Smith, W.C., and H.C. Pillsbury, "Surgical Treatment of Meniere's Disease Since Thomsen," *American Journal of Otolaryngology*, 9:39-43, 1988.
42. Ueda, H., Y. Muratsuka, and T. Konishi, "Effect of Glycerol on Inner Ear Fluid Electrolytes and Osmolalities in Guinea Pigs," *Annals of Otolaryngology, Rhinology, and Laryngology*, 96:461-467, 1987.
43. Wackym, P.A., U. Friberg, H.T. Bui, F.H. Linthicum, F. Hofman, D. Bagger-Sjoberg, and H. Rask-Andersen, "Human Endolymphatic Sac: Morphologic Evidence of Immunologic Function," *Annals of Otolaryngology, Rhinology, and Laryngology*, 96:276-281, 1987.
44. Wiet, R.J., "Case Selection in Inner Ear Surgery for Meniere's Disease," *Otolaryngologic Clinics of North America*, 16:115-121, 1983.
45. Wright, J.W., Jr., J.W. Wright III, and W. Hicks, "Valve Implants: Comparative Analysis of the First Years' Experience with Results in Other Sac Operations," *Otolaryngologic Clinics of North America*, 16:175-179, 1983.
46. Wright, J.W., and G.W. Hicks, "Valved Implants in Endolymphatic Sac Surgery," *American Journal of Otolaryngology*, 8:307-312, 1987.

V. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Economic Impact

FDA has examined the economic consequences of this proposed regulation in accordance with the criteria in section 1(b) of Executive

Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only one small firm will be affected by this proposed regulation. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96-354) that the proposed regulation would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final regulation based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

VII. Comments

Interested persons may, on or before July 3, 1990, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before May 21, 1990, submit to the Dockets Management Branch a written request to change the classification of the endolymphatic shunt tube with valve. Two copies of any requests are to be

submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 874

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of title 21 of the Code of Federal Regulations in part 874 be amended as follows:

PART 874—EAR, NOSE, AND THROAT DEVICES

1. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section 874.3850 is amended by revising paragraph (c) to read as follows:

§ 874.3850 Endolymphatic shunt tube with valve.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date to be 90 days after date of promulgation of a final rule) for any endolymphatic shunt tube with valve that was in commercial distribution before May 28, 1976, or that has on or before (date to be 90 days after date of promulgation of a final rule), been found to be substantially equivalent to an endolymphatic shunt tube with valve that was in commercial distribution before May 28, 1976. Any other endolymphatic shunt tube with valve shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 5, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-10390 Filed 5-3-90; 8:45 am]

BILLING CODE 4160-01-M

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federal register

Friday
May 4, 1990

Part V

Environmental Protection Agency

40 CFR Part 6

**National Environmental Policy Act Review
Procedures for Public and Other Federal
Agency Involvement and Its Office of
Research and Development; Proposed
Rule**

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 6

[FRL-3631-9]

RIN 2030-AA14

**Subpart D—The Environmental
Protection Agency's National
Environmental Policy Act Review
Procedures for Public and Other
Federal Agency Involvement**
**Subpart G—The Environmental
Protection Agency's National
Environmental Policy Act Review
Procedures for its Office of Research
and Development**
AGENCY: Environmental Protection
Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Environmental Protection Agency's (EPA) National Environmental Policy Act (NEPA) regulation in 40 CFR part 6 subpart G which addresses the environmental review procedures for projects conducted by the Office of Research and Development (ORD). The proposed changes to subpart G include: development of procedures to categorically exclude from a full NEPA review those ORD projects normally having no significant impact on the environment; revision of criteria requiring preparation of environmental impact statements (EISs) on ORD projects; provision to coordinate, where feasible, ORD's NEPA reviews with other EPA program reviews; and general clarification of the NEPA review process for ORD actions.

This notice also proposes to amend subpart D of EPA's NEPA regulations entitled Public and Other Federal Agency Involvement, specifically § 6.400(f). **Categorical exclusions.** In this rulemaking, EPA proposes to eliminate the current requirement for public notice of EPA's categorical exclusion determinations for all of EPA's programs except the Wastewater Treatment Construction Grants Program, where it has been beneficial for some activities. Interested persons can still obtain information regarding categorical exclusion determinations by contacting EPA's Office of Research Program Management for ORD actions or Office of Federal Activities for other program actions.

DATES: Comments on this rulemaking must be received by June 18, 1990.

ADDRESSES: Comments should be mailed to Judith Troast, Office of Federal Activities, A-104,

 Environmental Protection Agency, 401 M
Street, Southwest, Washington, DC
20460.

FOR FURTHER INFORMATION CONTACT:
Judith Troast at the above address or by
telephone at (202) 382-5905.

SUPPLEMENTARY INFORMATION: Among the changes proposed in this rulemaking is the development of procedures to categorically exclude ORD projects that normally have no significant impact on the environment from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS). Subpart G of EPA's NEPA regulation in 40 CFR part 6 currently does not contain any provision for categorically excluding ORD research projects. However, ORD actions involving minor construction or rehabilitation of ORD facilities may be addressed under the current general categorical exclusion criteria in section 6.107(d). For all other projects carried out by ORD, either an EA or an EIS must be prepared. For extramural research this amounts to approximately 450 environmental reviews annually. An estimated 98 percent of these reviews are on projects which experience has indicated would have no significant impact on the environment, such as literature reviews, computer modeling studies, monitoring and sampling activities, and research conducted completely in contained facilities (e.g., within a laboratory or other enclosed building). By this rulemaking, EPA is proposing to modify this review requirement to enable ORD to focus its resources on assessing projects that have the potential to significantly affect the environment. The changes are consistent with the Council on Environmental Quality's (CEQ) NEPA regulations for categorical exclusion in 40 CFR 1508.4.

In keeping with the current procedures in § 6.107(f) of EPA's NEPA regulation for the development of new categories of excluded actions, the following criteria have been considered in evaluating the list of categorical exclusions proposed in subpart G:

(1) Any action taken seldom results in the effects identified in general or program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

EPA believes that the proposed list of activities meets these criteria. The activities rarely, if ever, satisfy any of the criteria for not granting a categorical exclusion contained in § 6.107 (e) and typically have not been the subject of an EIS. In addition, sufficient information is normally available to evaluate these actions.

In the list of actions identified for categorical exclusion, ORD has included projects that are conducted completely within a contained facility, such as a laboratory or other enclosed building, where methods are in place for disposal of laboratory wastes and these are safeguards against hazardous materials entering the environment. In order for a project to qualify for categorical exclusion under this category, a laboratory director must certify and provide documentation that the laboratory uses good laboratory practices and adheres to applicable federal statutes, regulations and guidelines, such as the National Institutes of Health Guidelines for Research Involving Recombinant DNA Molecules, and Resource Conservation and Recovery Act (RCRA) requirements for treatment, storage and disposal of hazardous wastes. Good laboratory practices must include procedures and facility design to address emergencies, and safeguards against hazardous materials accidentally entering the environment. Also, certification means that a project has undergone appropriate institutional review, such as the reviews conducted by Institutional Biosafety Committees for laboratory research involving recombinant DNA molecules. To ensure that extramural research is conducted in a safe manner, ORD will continue its practice of having project officers make periodic visits to the research facility.

As part of this rulemaking, EPA is proposing to revise the criteria requiring preparation of EISs on ORD actions. Currently, § 6.703(a) lists four criteria which address when an EIS would be required. Over the years, many ORD project officers have found the criteria confusing or vague and have had difficulty in determining to what types of projects they apply. Additionally, EPA recently recognized that the criteria may not adequately cover future research activities, such as research involving new technologies. In an effort to clarify the criteria and make them more applicable to ORD projects which could significantly affect the environment, EPA has reworded the first two criteria, eliminated criteria nos. 3 and 4, and added several new criteria. The new criteria are consistent with

CEQ's NEPA regulations and consideration of significant effects detailed in 40 CFR 1508.27. The new criteria include the following:

(3) The proposed action involves effects upon the environment which are likely to be highly controversial;

(4) The proposed action involves environmental effects which could accumulate over time or combine with effects of other actions to create impacts which are significant;

(5) The proposed action involves uncertain environmental effects or unique risks which may be significant.

Section 6.703(b) of the current regulation includes two criteria for determining when an EIS is usually not warranted. These are:

(1) The project is conducted completely within a laboratory or other facility and external environmental effects have been eliminated by methods for disposal of laboratory wastes and safeguards to prevent hazardous materials entering the environment accidentally; and

(2) The project is a relatively small experiment or investigation that is part of a non-federally funded activity of the private sector, and it makes no significant new or additional contribution to existing pollution.

In the proposed revision, the first criterion has been removed from this section and reinserted as one of the criteria for categorical exclusion. The second criterion has been eliminated altogether because EPA has found it unnecessary to specifically address this type of project since it would be covered under other criteria.

ORD does not normally carry out or support actions which require the preparation of an EIS, consequently, none are listed in this subpart. However, section 6.706 includes a list of actions which would normally result in preparation of an EA. These actions are:

(1) Initial field demonstration of a new technology;

(2) Field trials of a new product or new uses of an existing technology; and

(3) Alteration of a local habitat by physical or chemical means.

As part of the environmental review, these undertakings, as well as other ORD projects, will be evaluated using the EIS criteria in section 6.108 and section 6.706 to determine whether an EIS must be prepared.

EPA has included in this rulemaking a new provision [in § 6.703 (c)] for coordinating ORD NEPA reviews with reviews conducted in other EPA programs. In developing this section, EPA specifically had in mind the coordination of ORD NEPA reviews with the reviews conducted in the Office

of Pesticides and Toxic Substances. However, these provisions apply to other program reviews, as well. An example includes the case where an ORD-funded project requires an experimental use permit (EUP) to field test a pesticide. Under EPA's NEPA regulation, ORD is required to conduct a NEPA review of the proposed project. The Office of Pesticide Programs is also required by the Federal Insecticide, Fungicide, and Rodenticide Act to conduct an environmental review of the EUP application. In order to avoid delays in processing the application and duplication of Agency efforts, the reviews between programs will be coordinated. Where appropriate, technical support documents prepared for reviews in a program office will be adopted for use in ORD's NEPA review. Also where feasible, EPA will coordinate the timing of the reviews. In some cases, however, completely concurrent reviews may not be possible. Nevertheless, all required reviews will be completed prior to approval of the project. EPA believes this revision is in keeping with the intent of the CEQ NEPA regulations, specifically section 1506.4 which addresses combining documents.

As part of this rulemaking, the text of subpart G has been reformatted to more clearly describe the environmental review process for ORD projects. In the revisions, an overview of the environmental review process is presented first, followed by a discussion of the components of the NEPA review at each stage of the environmental review process. A flow chart of the environmental review process has also been inserted in the regulation. In the revision, emphasis has been placed on the review of individual projects and how this is to be conducted for intramural and extramural research activities. Section 6.703 Purpose has been expanded to include a brief explanation of the ORD program within EPA.

Included in this rulemaking is a proposal to amend § 6.400(f) Categorical exclusions in 40 CFR part 6 subpart D—Public and other Federal Agency Involvement. As currently written, the regulation requires applicants to publish notice of EPA's categorical exclusion determinations. It also requires the Agency to make documentation of these decisions available to the public and distribute notices of the determinations to all known interested parties. Consistent with the CEQ NEPA regulations, EPA believes that public notification of categorical exclusion determinations is unwarranted for most of its actions and places an undue

burden on the applicant and the Agency. In this rulemaking, EPA proposes to eliminate the public notice requirement for categorical exclusion determinations in all of EPA's programs except the Wastewater Treatment Construction Grants Program. For this program, the requirement will remain in effect because the Agency has found it to be of benefit in obtaining new information on certain projects, such as minor plant expansions. In a few of these projects, categorical exclusion determinations have been rescinded. For the other programs, the public can still obtain information on categorical exclusion determinations by contacting EPA's Office of Research Program Management for ORD actions, or Office of Federal Activities for other program actions.

EPA has determined that the rulemaking is not a "major rule" under Executive Order 12291 and does not warrant preparation of a regulatory impact analysis. Also, this rulemaking will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

As required by Executive Order 12291, this action was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB to EPA and any EPA written responses to those comments have been made a part of the record and are available to the public upon request.

List of Subjects in 40 CFR Part 6

Environmental impact statements.

Dated: April 12, 1990.

William K. Reilly,

Administrator, Environmental Protection Agency.

Proposed Amendments

For the reasons set out in the preamble, title 40 part 6 subparts D and G of the Code of Federal Regulation are proposed to be amended as follows:

Subpart D—[Amended]

1. The authority citation for part 6 continues to read as follows:

Authority: Sections 101, 102, and 103 of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); also, the Council of Environmental Quality Regulations dated Nov. 29, 1978 (40 CFR part 1500).

2. Section 6.400 is amended by revising paragraph (f) to read as follows:

§ 6.400 Public involvement.

* * * * *

(f) *Categorical exclusions.* (1) For categorical exclusion determinations

under subpart E (Wastewater Treatment Construction Grants Program), an applicant who files for and receives a determination of categorical exclusion under § 6.107(a), or has one rescinded under § 6.107(c), shall publish a notice indicating the determination of eligibility or rescission in a local newspaper of community-wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, concurrent with the publication of the notice, make the documentation as outlined in § 6.107(b) available to the public and distribute the notice of the determination to all known interested parties.

(2) For categorical exclusion determinations under other subparts of this regulation, no public notice need be issued; however, information regarding these determinations may be obtained by contacting the U.S. Environmental Protection Agency's Office of Research Program Management for ORD actions, or the Office of Federal Activities for other program actions.

3. Subpart G is revised in its entirety to read as follows:

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

Sec.

- 6.700 Purpose.
- 6.701 Definition.
- 6.702 Applicability.
- 6.703 General.
- 6.704 Categorical exclusions.
- 6.705 Environmental assessment and finding of no significant impact.
- 6.706 Environmental impact statement.

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

§ 6.700 Purpose.

(a) This subpart amplifies the requirements described in subparts A through D of the part by providing specific environmental review procedures for activities undertaken or funded by the Office of Research and Development (ORD).

(b) The ORD Program provides scientific support for setting environmental standards as well as the technology needed to monitor and control pollution. Intramural research is conducted at EPA laboratories and field stations throughout the United States. Extramural research is implemented through grants, cooperative agreements, and contracts. The majority of ORD's research is conducted within the confines of laboratories. Outdoor research includes monitoring, sampling,

and environmental stress and ecological effects studies.

§ 6.701 Definition.

The term "appropriate program official" means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural projects under the purview of ORD.

§ 6.703 General.

(a) *Environmental information.* (1) For intramural research projects, information necessary to perform the environmental review shall be obtained by the appropriate program official.

(2) For extramural research projects, environmental information documents shall be submitted to EPA by applicants to facilitate the Agency's environmental review process. Guidance on environmental information documents shall be included in all assistance application kits and in contract proposal instructions. If there is a question concerning the preparation of an environmental information document, the applicant should consult with the project officer or contract officer for guidance.

(b) *Environmental review.* The diagram in Figure 1 represents the various stages of the environmental review process to be undertaken for ORD projects.

(1) For intramural research projects, an environmental review will be performed for each laboratory's projects at the start of the planning year. The review will be conducted before projects are incorporated into the ORD program planning system unless they are excluded from review by existing legislation. Projects added at a later date and, therefore, not identified at the start of the planning year, or any major redirection of a project, also will be subjected to an environmental review. This review will be performed in accordance with the process set forth in this subpart and depicted in Figure 1.

(2) For extramural research projects, the environmental review shall be conducted before an initial or continuing award is made. The appropriate program official will perform the environmental review in accordance with the process set forth in this subpart and depicted in Figure 1. EPA form 5300-23 will be used to document categorical exclusion determinations or,

with appropriate supporting analysis, as the environmental assessment (EA). The completed form 5300-23 and any finding of no significant impact (FNSI) or environmental impact statement (EIS) will be submitted with the proposal package to the appropriate EPA assistance or contract office.

(c) *Agency coordination.* In order to avoid duplication of effort and ensure consistency throughout the Agency, environmental reviews of ORD projects will be coordinated, as appropriate and feasible, with reviews performed by other program offices. Technical support documents prepared for reviews in other EPA programs may be adopted for use in ORD's environmental reviews and supplemented, as appropriate.

§ 6.704 Categorical exclusions.

(a) At the beginning of the environmental review process (see Figure 1), the appropriate program official shall determine whether an ORD project can be categorically excluded from the substantive requirements of a NEPA review. This determination shall be based on general criteria in § 6.107(d) and specialized categories of ORD actions eligible for exclusion in § 6.704 (b). If the appropriate program official determines that an ORD project is consistent with the general criteria and any of the specialized categories of eligible activities, and does not satisfy the criteria in § 6.107(e) for not granting a categorical exclusion, then this finding shall be documented and no further action shall be required. A categorical exclusion shall be revoked by the appropriate program official if it is determined that the project meets the criteria for revocation in § 6.107(c). Projects that fail to qualify for categorical exclusion or for which categorical exclusion has been revoked must undergo full environmental review in accordance with § 6.705 and § 6.706.

(b) The following specialized categories of ORD actions are eligible for categorical exclusion from a detailed NEPA review:

- (1) Library of literature searches and studies;
- (2) Computer studies and activities;
- (3) Monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs;
- (4) Projects conducted completely within a contained facility, such as a laboratory or other enclosed building, where methods are employed for appropriate disposal of laboratory wastes and safeguards exist against hazardous, toxic, and radioactive materials entering the environment. Laboratory directors or other

appropriate officials must certify and provide documentation that the laboratory follows good laboratory practices and adheres to applicable federal statutes, regulations and guidelines.

§ 6.705 Environmental assessment and finding of no significant impact.

(a) When a project does not meet any of the criteria for categorical exclusion, the appropriate program official shall undertake an environmental assessment to determine whether an EIS is required or if a FNSI can be made. ORD projects which normally result in the preparation of an EA include the following:

(1) Initial field demonstration of a new technology;

(2) Field trials of a new product or new uses of an existing technology;

(3) Alteration of a local habitat by physical or chemical means.

(b) If the environmental assessment reveals that the research is not anticipated to have a significant impact on the environment, the appropriate program official shall prepare a FNSI in accordance with § 6.105(f). Pursuant to § 6.400(d), no administrative action will be taken on a project until the prescribed 30-day comment period for a FNSI has elapsed and the Agency has fully considered all comments.

(c) On actions involving potentially significant impacts on the environment, a FNSI may be prepared if changes have been made in the proposed action to eliminate significant adverse impacts.

These changes must be documented in the proposal and in the FNSI.

(d) If the environmental assessment reveals that the research may have a significant impact on the environment, an EIS must be prepared. The appropriate program official may make a determination that an EIS is necessary without preparing a formal environmental assessment. This determination may be made by applying the criteria for preparation of an EIS in § 6.706.

§ 6.706 Environmental impact statement.

(a) *Criteria for preparation.* In performing the environmental review, the appropriate program official shall assure that an EIS is prepared when any of the conditions under § 6.108 (a) through (g) exist or when:

(1) The proposed action may significantly affect the environment through the release of radioactive, hazardous or toxic substances;

(2) The proposed action may significantly affect the environment through the release of an organism or organisms;

(3) The proposed action involves effects upon the environment which may be highly controversial;

(4) The proposed action involves environmental effects which may accumulate over time or combine with effects of other actions to create impacts which are significant;

(5) The proposed action involves uncertain environmental effects or

unique environmental risks which may be significant.

(b) *ORD actions which may require preparation of an EIS.* There are no ORD actions which normally require the preparation of an EIS. However, each ORD project will be evaluated using the EIS criteria as stated in § 6.706(a) to determine whether an EIS must be prepared.

(c) *Notice of intent.* (1) If the environmental review reveals that a proposed action may have a significant adverse effect on the environment and this effect cannot be eliminated by redirection of the research or other means, the appropriate program official shall issue a notice of intent to prepare an EIS pursuant to § 6.400(b).

(2) As soon as possible after release of the notice of intent, the appropriate program official shall ensure that a draft EIS is prepared in accordance with subpart B and that the public is involved in accordance with subpart D.

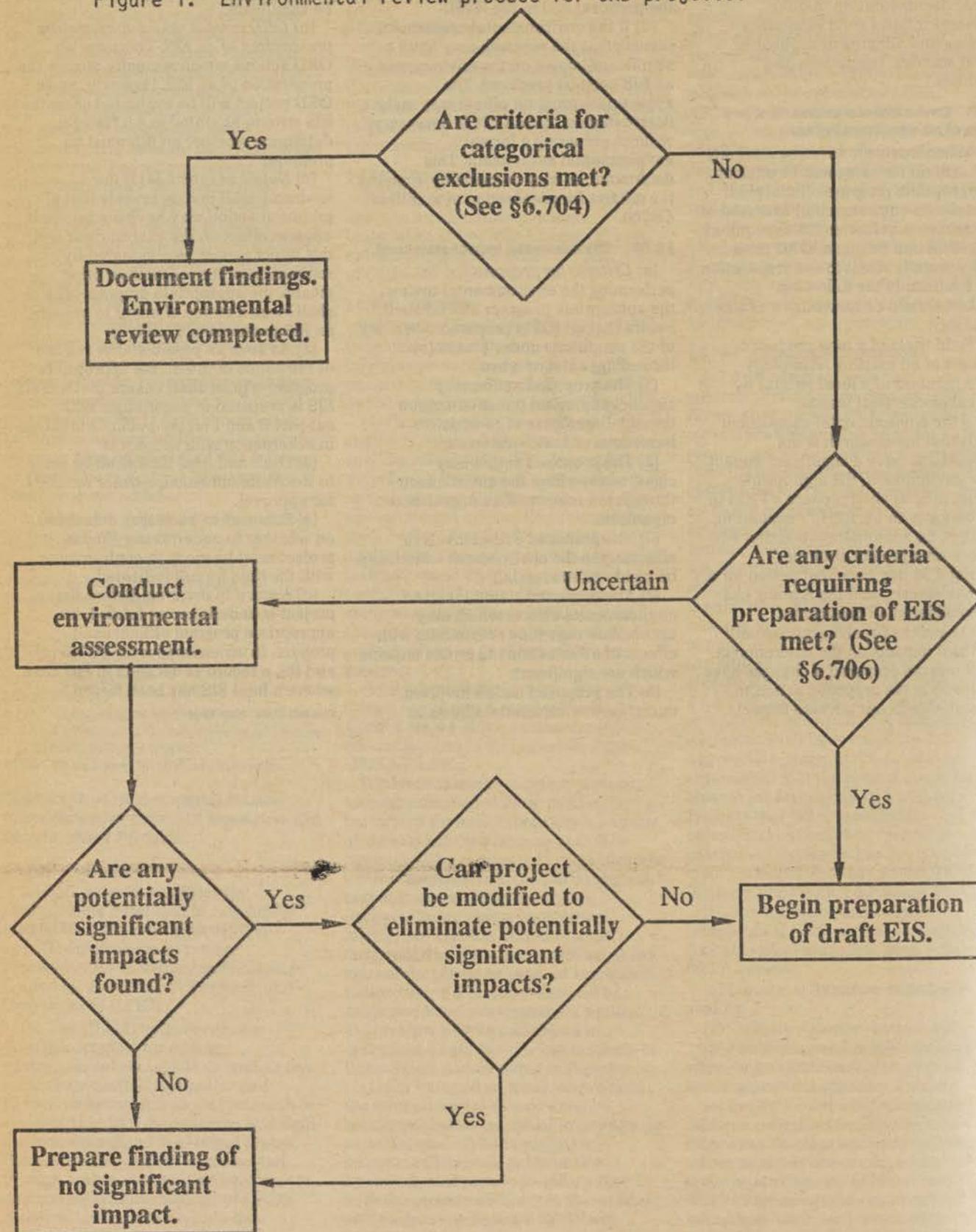
(3) Draft and final EISs shall be sent to the Assistant Administrator for ORD for approval.

(4) Pursuant to § 6.401(b), a decision on whether to undertake or fund a project must be made in conformance with the time frames indicated.

(d) *Record of decision.* Before the project is undertaken or funded, the appropriate program official shall prepare, in accordance with § 6.105 (g) and (h), a record of decision in any case where a final EIS has been issued.

BILLING CODE 6560-50-M

Figure 1. Environmental review process for ORD projects.



federal register

Friday,
May 4, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

**Endangered and Threatened Wildlife and
Plants; Emergency Rule and Proposed
Rule To List the Golden-cheeked Warbler
as Endangered**

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Emergency Rule To List the Golden-cheeked Warbler as Endangered**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the golden-cheeked warbler (*Dendroica chrysoparia*) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Ongoing and imminent habitat destruction has been identified, and some of the best golden-cheeked warbler habitat has already been lost. Because of the need to make Federal funding, protection, and other measures immediately available to protect the habitat, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

A proposed rule to list the golden-cheeked warbler as endangered is published concurrently with this emergency rule in the same Federal Register part, to provide for public comment and hearings (if requested).

DATES: This emergency determination is effective on May 4, 1990, and expires on January 2, 1991.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the Ecological Services Field Office, U.S. Fish and Wildlife Service, 9A33 Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor, Ecological Services Field Office, at the above address (telephone 817/334-2961 or FTS 334-2961).

SUPPLEMENTARY INFORMATION:**Background**

See the Background section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

Summary of Factors Affecting the Species

The factors are addressed in the Summary of Factors section of the

proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

Critical Habitat

Critical habitat designation is discussed in the Critical Habitat section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

Available Conservation Measures

See the Available Conservation Measures Section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

Emergency Determination

Under section 4(b)(7) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the Federal Register. The detailed reasons why this rule is necessary with respect to the golden-cheeked warbler are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the golden-cheeked warbler exists as a result of on-going and imminent habitat destruction by both illegal and legal clearing. The golden-cheeked warbler needs mature Ashe juniper-mixed oak woodland or forest for nesting and feeding. Only mature Ashe juniper that is at least 20 years old provides the shedding bark that the golden-cheeked warbler requires for nest construction. Some of the best habitat for this species occurs in Travis County, Texas. Travis County has, by far, more warbler habitat than any other county, and it is some of the least fragmented habitat in the golden-cheeked warbler's range.

Development of a number of tracts is already in some stage of the approval process with the City of Austin in Travis County. The City recently discovered that several tracts that are candidates for development, including several hundred acres of golden-cheeked warbler habitat, has been completely or partially cleared without a City permit. About 80 hectares (200 acres) of golden-cheeked warbler habitat were cleared illegally on an area that did not have an approved site plan from the City of Austin.

Some tracts were cleared under agricultural exemption provisions of the

City code. About 8 hectares (20 acres) were cleared on one area while the developers and the City of Austin were discussing whether the property qualified for the ranching and farming or landscape maintenance exemptions. Although this property is in the development approval process, it qualifies under the current ranching and farming exemption because it is leased to someone who is raising goats on it.

For another Planned Unit Development (PUD), the developers recently submitted a request for a permit for surveying. The City has a 15-foot wide limit on clearing survey lines. The developers' request was for 15-foot wide survey lines every 50-feet in a grid formation. The City denied this request, based on the fact that the developers have completed a subdivision PUD plan, which included surveying.

The City is limited in its ability to prohibit clearing of warbler habitat. Many developments that have approved subdivision plans are a combination of residential and commercial development. Developers could proceed with clearing for single family dwelling development now, without a site plan. With an approved subdivision plan, the developers can build roadways and utility lines. A substantial amount of clearing could be done legally in golden-cheeked warbler habitat in the Austin area.

The City of Austin has a five-mile extraterritorial jurisdiction (ETJ) outside the City limits. The area outside the ETJ is not under any clearing control, and much development is proposed outside that boundary, around Travis Lake.

In urban counties, an estimated 19,000-55,750 hectares (47,900-137,750 acres) of suitable habitat for golden-cheeked warblers remain. In rural counties, an estimated 12,750-51,000 hectares (31,500-126,000 acres) of suitable golden-cheeked warbler habitat remain (Wahl *et al.* 1990).

In addition to the direct loss of habitat, clearing also increases fragmentation and is more detrimental than indicated merely by acres of habitat lost. A relatively small loss of habitat can contribute to fragmentation of a large area (Wahl *et al.* 1990). Fragmentation reduces the productivity of remaining habitat because of increased nest parasitism, and increased predation of eggs, young, and adults.

A Habitat Conservation Plan (HCP) for the Austin region is currently being developed. The golden-cheeked warbler is one of several species being included in the plan. The options available to conserve the species (such as creation of preserves and defining productive

configurations of nesting habitat) that could be included in the HCP for the golden-cheeked warbler may be seriously limited if further destruction of important habitat occurs before the plan is completed.

Further clearing will likely result in the loss of significant recovery potential for the golden-cheeked warbler. By implementing the emergency provisions of the Act at this time, the amount of land cleared at an accelerated rate during the period between (a) the date the proposal to list was published, and (b) the date the final rule becomes effective, can be substantially reduced. Clearing of golden-cheeked warbler habitat poses a significant risk to the survival of the species.

References Cited

The references are listed in the References Cited section of the proposed rule to list the golden-cheeked warbler as endangered, published in this same Federal Register part.

Author

The primary author of this emergency rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until January 2, 1991, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Birds," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
BIRDS							
Warbler, golden-cheeked.....	<i>Dendroica chrysoparia</i>	U.S.A. (TX), Mexico, Guatemala, Honduras, Nicaragua.	Entire.....	E	387E	NA	NA

Dated: April 30, 1990.
 Richard N. Smith,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 90-10432 Filed 5-3-90; 8:45 am]
 BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Golden-cheeked Warbler as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the golden-cheeked warbler (*Dendroica chrysoparia*) as an endangered species, under the authority contained in the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not being proposed. This small, insectivorous bird nests exclusively in central Texas in mature Ashe juniper-mixed oak woodland or forest. The golden-cheeked warbler is threatened by habitat loss and fragmentation, which result from widespread clearing of juniper as a range management practice, and urban encroachment into the range of the warbler. The threat of brown-headed cowbird parasitism increases in magnitude as habitat becomes more fragmented.

DATES: Comments from all interested parties must be received by July 3, 1990. Public hearing requests must be received by June 18, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 9A33 Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas 76102. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor (see **ADDRESSES**) at (817) 334-2961 or FTS 334-2961.

SUPPLEMENTARY INFORMATION:**Background**

The golden-cheeked warbler is a member of the family Emberizidae. The species was discovered in Guatemala by Osbert Salvin in 1859, and described in 1860 by Philip Lutley Sclater and Salvin (Pulich 1976).

The golden-cheeked warbler is a small, insectivorous bird. In breeding plumage, the male has yellow cheeks outlined in black, with a black stripe extending through the eye to the side of

the nape. Its crown, upperparts, throat, neck, upper breast, and streaking along the flanks are jet black. Wings are black with two distinct white bars, and the tail is blackish. The female is less colorful than the male. Her upperparts are yellowish-olive green, the wings and tail are grayish, and the cheeks are not as bright yellow as the male (Pulich 1976).

This species is the only endemic breeding bird of Texas whose entire nesting range occurs within the State (Wahl *et al.* 1990). It occurs in central Texas from Palo Pinto and Bosque Counties, south through the eastern and south-central portions of the Edward Plateau (Shaw 1989). Pulich (1976) considered 31 counties in central Texas to be the nesting range of the golden-cheeked warbler. The breeding range of the golden-cheeked warbler coincides closely with the range of *Juniperus ashei* (Ashe juniper). The golden-cheeked warbler depends on Ashe juniper for nesting materials and substrate, and singing perches (Kroll 1980, Pulich 1976, Shaw 1989, Wahl *et al.* 1990). The golden-cheeked warbler uses strips of Ashe juniper bark to construct its nest. The strips of bark are bound together with cobwebs to form a compact little cup, which is then lined with fur and feathers. The nest is commonly located about 4.5 meters (15 feet) from the ground, although it varies from 1.5-10 meters (5-32 feet) (Pulich 1976).

Golden-cheeked warbler habitat consists of Ashe juniper and various species of oak, such as *Quercus durandii breviloba* (scrub oak) and *Quercus buckleyi* = *Q. texana* (Texas oak). Oaks (especially deciduous species) apparently provide essential foraging substrate (Wahl *et al.* 1990). The golden-cheeked warbler feeds on whatever insects are available, including caterpillars, green lacewings, small green cicadas, katydids, walkingsticks, flies, adult moths, and small butterflies. The birds also eat spiders (Pulich 1976).

The golden-cheeked warbler winters in Guatemala, Honduras, Nicaragua, Mexico, and possibly Belize. It arrives in Texas on the breeding territory in mid-March. The golden-cheeked warbler returns to the same area year after year (Pulich 1976). The species has a narrow tolerance in habitat requirements. If habitat is destroyed, the birds that are dependent upon it are eliminated from the breeding population (Pulich 1976).

The presence of mature Ashe junipers is apparently a major requirement for habitat of golden-cheeked warblers. Even nests in other tree species contain long strips of Ashe juniper (Pulich 1976). Ashe juniper trees begin sloughing bark near the base at about 20 years, and at

the crown by 40 years (Kroll 1980). The golden-cheeked warbler is mature forest dweller because of its dependence on several old-growth attributes of Ashe juniper-oak woodland, including nearly closed canopy, canopy height, and shredding bark of older junipers (Wahl *et al.* 1990).

The golden-cheeked warbler breeding season is mainly in April and May. Usually three or four eggs, rarely five, are laid. The eggs are white or creamy white with varying amounts of brown and less predominant shades of purple. The female incubates the eggs for 12 days. The male plays an active role in feeding and care of the young. The young leave the nest when 8 or 9 days old, but remain nearby in a loose family group while being cared for by both parents (Pulich 1976). Second nesting attempts are made only when the first nest is destroyed or deserted. In one year, 63 percent of the nests were deserted because of brown-headed cowbird parasitism (Pulich 1976). Nest desertion is also caused by habitat destruction, rat snakes, storms, and possibly squirrel predation. Nesting success appears to be low for this species (Pulich 1976).

Pulich (1976) estimated the total adult golden-cheeked warbler population at 15,000-17,000 birds. Wahl *et al.* (1990) reported the median density for all study sites where golden-cheeked warblers were found to be 15 pairs/100 hectares (247 acres). It was estimated that in urban counties, 19,400-55,750 hectares (47,900-137,750 acres) of suitable habitat for golden-cheeked warblers remain. In rural counties, an estimated 12,750-51,000 hectares (31,500-126,000 acres) of suitable golden-cheeked warbler habitat remain. Based on the assumption that all suitable habitat is occupied, then the carrying capacity of the available suitable habitat area would support between 4,800-16,000 pairs of golden-cheeked warblers at a density of 15 pairs/100 hectares (247 acres). Probably not all golden-cheeked warblers in the population are paired, however, and all habitat is not occupied at even the medium density of 15 pairs/100 hectares (247 acres) because of habitat fragmentation (Wahl *et al.* 1990).

In the December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454), the golden-cheeked warbler (*Dendroica chrysoparia*) was included as a Category 2 species. Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly

appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. In both the September 18, 1985, Review of Vertebrate Wildlife; Notice of Review (50 FR 37958), and the January 6, 1989, Animal Notice of Review (54 FR 554) the golden-cheeked warbler was retained in Category 2.

A petition was received by the Service on February 2, 1990, requesting that the Service prepare an emergency listing for the golden-cheeked warbler because the normal listing procedure could be inadequate to protect the bird and its habitat from imminent destruction from clearing and development. The Service treated this document as a petition under the Administrative Procedure Act. The Service has conducted an extensive review of the status of the golden-cheeked warbler and has determined that an emergency posing a significant risk to the well-being of the golden-cheeked warbler exists. An emergency rule is being issued concurrent with this proposed rule. The emergency rule shall cease to have force and effect after 240 days, unless the rulemaking procedure initiated by this proposed rule is completed prior to that time.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the golden-cheeked warbler (*Dendroica chrysoparia*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. A juniper or "cedar" eradication program (including Ashe juniper) was implemented in Texas in 1948, and from the 1950's to the 1970's, about 50 percent of the juniper acreage was cleared for pasture improvement and urbanization. At one time, juniper was used for aromatic oils, fuel, and fence posts, but more recently it is usually burned on the cleared site. Several counties that had been golden-cheeked warbler habitat, including portions of Gillespie County, all of Mason County, and others, no longer contained suitable habitat by the 1970's (Pulich 1976).

Widespread clearing of juniper as a range management practice and urban encroachment continue to threaten the golden-cheeked warbler and its habitat. Loss of woody cover through clearing reduces the total habitat acreage available to the golden-cheeked warbler and causes fragmentation of larger patches into smaller ones (Wahl *et al.* 1990). Larger areas of continuous cover are often owned by a single person, and these areas are often subdivided and fragmented, especially near expanding population centers such as Austin, San Antonio, and the Austin-San Antonio corridor. Because of the growth and development in this corridor, the greatest rate of golden-cheeked warbler habitat loss has occurred in the southern and eastern portions of the Edwards Plateau (Wahl *et al.* 1990).

Junipers often are removed from private and public lands for enhancement of game populations, range improvement, and enhancement of viewsheds. Removal of junipers from old-growth, Ashe juniper—mixed oak woodlands has two negative effects on the quality or warbler habitat: (1) It removes sources of required nesting material, and (2) it reduces total canopy cover, often to the extent that the stand will no longer support warblers. Clearing junipers to benefit game species such as deer and turkey that occupy mid-successional habitats may adversely affect the golden-cheeked warbler, because it eliminates late successional communities needed by the golden-cheeked warbler and other mature growth species.

Wahl *et al.* (1990) estimated the area of potentially suitable habitat remaining for the golden-cheeked warbler across its entire breeding range. The areas sampled by Wahl *et al.* (1990) experienced loss of 15–45 percent of warbler habitat over a period of about 10 years. The rate of habitat loss is greater in areas subject to urban growth and real estate development, particularly in Travis County. Western Travis County experienced a 40 percent loss in warbler habitat over a 10-year period (4 percent loss/year) and only 16 percent of the county was covered by warbler habitat at the start of the 10-year period (Shaw 1989, Wahl *et al.* 1990). The urban corridor between Austin and San Antonio experienced a 4.4 percent annual loss of golden-cheeked warbler habitat over a 10-year period. Most breeding golden-cheeked warblers inhabit the rapidly changing urban counties on the eastern Edwards Plateau. In the northern portion of the golden-cheeked warbler's range, there was a 15 percent loss of habitat over an

8-year interval. In rural areas, the rate of habitat loss has been steady at about 2–3 percent/year for the last 20 years (Wahl *et al.* 1990). At present rates, the estimated maximum carrying capacity of the habitat will be 2,266–7,527 pairs of golden-cheeked warblers by the year 2000, a reduction in population size of more than 50 percent. Any increase in rates of habitat loss form human effects or other causes will reduce the population further (Wahl *et al.* 1990).

B. Overutilization for commercial, recreational, scientific, or educational purposes. None known at this time.

C. Disease or predation. Several species have been named as nest predators for golden-cheeked warblers, including scrub jays, grackles, feral cats, rat snakes, and possibly squirrels (Pease and Gingerich 1989, Pulich 1976). The difficulty in observing golden-cheeked warbler nests makes it difficult to assess the extent of nest predation (Wahl *et al.* 1990).

D. The inadequacy of existing regulatory mechanisms. The golden-cheeked warbler is subject to the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*). Under this Act, a Federal permit is required to take, capture, band, or otherwise handle the nest, eggs, or individuals of migratory bird species.

The Texas Parks and Wildlife Department lists the golden-cheeked warbler as a threatened species. Departmental regulations make it illegal to shoot or physically harm, possess, sell, or transport golden-cheeked warblers without a permit. However, there is no provision for protection of habitat in these regulations. Listing this species under the Act would provide additional protection, especially for habitat, and encourage active management through the "Available Conservation Measures" discussed below.

E. Other natural or manmade factors affecting its continued existence. Habitat destruction that causes habitat fragmentation is an immediate threat to the golden-cheeked warbler. Habitat fragmentation increases the degree of isolation between patches of suitable habitat and breaks available habitat into smaller pieces (Pease and Gingerich 1989). Habitat quality is affected by habitat patch size, distance between patches, configuration of patches (ratio of edge to area), corridor availability, and adjacent land use (Shaw 1989). Fragmentation in urban counties has limited the number of suitable size habitat patches to between 16–46 percent of the total vegetation structurally suitable for warbler use, and in rural areas the values range from

11-44 percent (Wahl *et al.* 1990). In Travis County, less than 47 percent of the total golden-cheeked warbler habitat is in patches of 50 hectares (124 acres) or more (Wahl *et al.* 1990).

An increased ratio of edge/area in small patches of suitable habitat has an impact on breeding bird species because of increased levels of nest predation, brood parasitism, and interspecific competition in edge habitats (Pease and Gingerich 1989).

Brown-headed cowbirds are abundant throughout the golden-cheeked warbler's breeding range, and threaten other species often associated with warblers. Habitat patch size and proximity to high cowbird densities (e.g., near livestock, corrals, urban areas, fields) are the primary determinants of degree of threat from cowbirds (Wahl *et al.* 1990). The effects of cowbird parasitism increase with increasing edge or habitat fragmentation. Golden-cheeked warblers occasionally are able to produce at least one fledgling from a parasitized nest. However, as the golden-cheeked warbler population continues to decline and habitat fragmentation increases, the relative threat of cowbird parasitism increases (Wahl *et al.* 1990).

In the mature Ashe juniper-mixed oak forests of the Balcones Canyonland sub-region of the Edwards Plateau, deciduous species generally are not well represented within the younger age classes. In most of these areas, long-term successional changes are leading toward evergreen woodlands dominated by Ashe juniper. These areas are not suitable for golden-cheeked warblers because they lack deciduous oaks for foraging. Lack of reproduction of deciduous trees may be caused by browsing by unnaturally high populations of white-tailed deer, introduced feral ungulates, including feral and domestic goats, or by an oak wilt fungus (*Ceratocystis* spp.) that kills the trees (Wahl *et al.* 1990).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the golden-cheeked warbler as endangered. The species has experienced severe population declines throughout its range. Because of its narrow habitat requirements, and its habit of returning to the same area every year, habitat destruction leads to elimination of populations. Urban development is accelerating in the most important part of the golden-cheeked warbler's range. This species is vulnerable to increased

threats of nest parasitism and predation as habitat becomes more fragmented. Threatened status would not accurately reflect the population decline and imminent threats to this species. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. For the golden-cheeked warbler, the Service has concluded that critical habitat is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of the area as critical habitat. Much of the golden-cheeked warbler's habitat has been fragmented by land clearing activities. Some of the remaining habitat patches may be too small or isolated to support viable subpopulations of the species. The minimum patch size requirements of the golden-cheeked warbler are not determinable at this time.

During the proposed rule comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of, and threats to, the golden-cheeked warbler. The Service intends to use this and other information in formulating a decision on critical habitat designation for the golden-cheeked warbler.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species

that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Projects authorized, funded, or carried out by the Federal Highway Administration that may affect the golden-cheeked warbler, such as clearing of golden-cheeked warbler habitat, and activities on military installations that contain golden-cheeked warbler habitat would be subject to section 7 consultation.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services

Field Office, Fort Worth, Texas (see ADDRESSES).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

- Kroll, J.C. 1980. Habitat requirements of the golden-cheeked warbler: management implications. *Journal of Range Management* 33:60-65.
- Pease, C.M., and L.G. Gingerich. 1989. The habitat requirements of the black-capped vireo and golden-cheeked warbler populations near Austin, Texas. Report prepared for Austin Regional Habitat Conservation Plan, Biological Advisory Team, Austin, Texas. 55 pp.
- Pulich, W.M. 1976. The golden-cheeked warbler, a bioecological study. Texas Parks and Wildlife Department, Austin, Texas. 172 pp.
- Shaw, D.H. 1989. Applications of GIS and remote sensing for the characterization of habitat for threatened and endangered species. Unpublished Ph.D. thesis, University of North Texas, Denton, Texas.

Wahl, R., D.D. Diamond, and D. Shaw. 1990. The golden-cheeked warbler: a status review. U.S. Fish and Wildlife Service, Fort Worth, Texas. 63 pp. plus appendices and maps.

Author

The primary author of this proposed rule is Sonja Jahrsdoerfer, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Birds," to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Warbler, golden-cheeked	<i>Dendroica chrysoparia</i>	U.S.A (TX), Mexico, Guatemala, Honduras, Nicaragua.	Entire	E	387E,—	NA	NA

Dated: April 30, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-10433 Filed 5-3-90; 8:45 am]

BILLING CODE 4310-55-M

The first part of the book is devoted to a general history of the United States from its discovery by Columbus in 1492 to the present time. It covers the early years of settlement, the struggle for independence, the formation of the Constitution, and the development of the Union.

The second part of the book is devoted to a detailed history of the United States from 1789 to the present time. It covers the early years of the Republic, the struggle for the abolition of slavery, the Civil War, and the Reconstruction period.

The third part of the book is devoted to a detailed history of the United States from 1865 to the present time. It covers the Reconstruction period, the Gilded Age, the Progressive Era, and the modern era.

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The thirteenth part of the book is devoted to a detailed history of the United States from 1865 to the present time. It covers the Reconstruction period, the Gilded Age, the Progressive Era, and the modern era.

The fourteenth part of the book is devoted to a detailed history of the United States from 1865 to the present time. It covers the Reconstruction period, the Gilded Age, the Progressive Era, and the modern era.

The fifteenth part of the book is devoted to a detailed history of the United States from 1865 to the present time. It covers the Reconstruction period, the Gilded Age, the Progressive Era, and the modern era.

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Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2334/Pub. L. 101-278

To redesignate the Post Office located at 300 East Ninth Street in Austin, Texas, as the "Homer Thornberry Judicial Building". (May 1, 1990; 104 Stat. 147; 1 page) Price: \$1.00

S.J. Res. 258/Pub. L. 101-279

To authorize the President to proclaim the last Friday of April 1990 as "National Arbor Day". (May 1, 1990; 104 Stat. 148; 1 page) Price: \$1.00

