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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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 330, 331, 386

RIN 3064-AB01

Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule.

SUMMARY: The FDIC is amending its existing deposit insurance regulations (12 CFR parts 330, 331) which clarify and define the extent of insurance coverage afforded by the FDIC to deposit accounts maintained with FDIC-insured banks. These amendments are being made pursuant to section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all insured depository institutions, including savings associations that were previously insured by the former Federal Savings and Loan Insurance Corporation ("FSLIC").

The FDIC is also adopting other amendments to its deposit insurance regulations which the FDIC believes are necessary due to the increased complexity of financial transactions, the proliferation of new banking products and the problems which have confronted the FDIC in making insurance payments on deposits of closed banks since the regulations were first adopted in 1967.

In promulgating these amendments, the FDIC has taken into account the regulations, principles and interpretations for deposit insurance coverage utilized by the former FSLIC. In addition, the FDIC has considered all of the relevant factors necessary to promote safety and soundness, depositor confidence, and the stability

of deposits in insured depository institutions, as required by section 402(c)(4) of FIRREA.

These revisions are intended to: (1) Restate some existing regulations so as to make them easier to understand and apply; (2) broaden the scope of the regulations to encompass a wider variety of deposit accounts offered by financial institutions and to take into account more complicated forms of deposit ownership; (3) codify longstanding FDIC and/or FSLIC staff interpretations of the Federal Deposit Insurance Act and the National Housing Act; (4) simplify the process of determining the extent to which deposit accounts are entitled to deposit insurance coverage; and (5) provide answers to some of the most frequently asked questions about deposit insurance.

EFFECTIVE DATES: These amendments shall be effective on July 29, 1990, except § 330.15 shall be effective on May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Roger A. Hood, Assistant General Counsel (202-898-3681), or Claude A. Rollin, Senior Attorney (202-898-3985), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Discussion

A. The Proposed Amendments

On December 21, 1989, the FDIC published for comment a proposal in the *Federal Register* (54 FR 52,399) to amend its existing deposit insurance regulations (12 CFR parts 330, 331). The proposal was made pursuant to section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), which requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all insured depository institutions, including foreign banks having insured branches and savings associations that were previously insured by the former Federal Savings and Loan Insurance Corporation ("FSLIC").

Prior to the enactment of FIRREA, there were certain differences between the regulations, principles and interpretations for deposit insurance coverage which governed deposits in FDIC-insured banks and those that governed deposits in FSLIC-insured

savings associations. A summary of those differences appears in the preamble to the proposed amendments (54 FR 52,399, December 21, 1989). In the proposal, the FDIC proposed amendments to its regulations to resolve those differences. The FDIC also proposed other amendments to its deposit insurance regulations which the FDIC believed were necessary to, in essence, update its regulations, which had not been substantially modified or revised since they were first adopted in 1967. The proposal solicited comments for a 60-day comment period which was initially scheduled to expire on February 20, 1990.

On February 13, 1990, the FDIC Board of Directors voted to (1) extend the comment period for all of the proposed amendments until March 23, 1990; (2) authorize a public hearing on the proposed amendments which affect deposits maintained in connection with deferred compensation plans which qualify under section 457 of the Internal Revenue Code ("457 Plans"); and (3) issue a public statement indicating that the proposed amendments would be considered by the Board of Directors for adoption in final form no earlier than April 16, 1990.

The FDIC decided to extend the comment period to provide the public with more time to submit comments because (1) an exceptionally large number of comment letters on the proposed amendments had been received early in the comment period; (2) a number of individuals had requested an extension; and (3) it was believed that the comment period should be extended beyond the date of the public hearing to encompass any comments received at, or shortly after, the public hearing. The FDIC decided to limit the public hearing to the proposed rules affecting "457 Plan" deposits because over 90% of all comment letters received, at the time the FDIC decided to schedule the hearing, expressed opinions only on those particular proposed rules. The FDIC Board of Directors decided to issue a public statement about the timetable for adoption of the final regulations (indicating that the final regulations would not be considered by the Board prior to April 16, 1990) to provide all affected parties with the maximum amount of time to make any adjustments to their accounts which they anticipated

would be necessary as a result of the adoption of the uniform regulations.

B. Summary of Comments

In response to the Board's request for comments on the proposed amendments, the FDIC received more than 3,750 letters. The comment letters expressed the opinions of insured depository institutions, bank holding companies, life insurance companies, mortgage corporations, trade organizations, a variety of other groups and entities, as well as numerous individual depositors regarding the insurance which was proposed for various types of deposit accounts. The bulk of the comment letters expressed opinions on four subjects: (1) The proposed rules concerning "457 Plan" deposits; (2) the proposed rules governing mortgage servicing accounts; (3) the "grandfathering" of existing deposits; and (4) the manner by which insured institutions must notify depositors of the changes in the regulations. The overwhelming majority (more than 90%) of all the comment letters received by the FDIC expressed opinions on the deposit insurance coverage being proposed for "457 Plan" accounts. The other three proposals most frequently commented upon were mentioned in at least 50 comment letters each. Summaries of the comment letters received on the four proposals that generated the most comments appear below in separate sections.

Other proposed rules which were less frequently commented upon and will be summarized in this section include those that relate to the deposit insurance coverage provided for "convenience accounts," testamentary (revocable trust) accounts, overfunded pension plan accounts, deposits denominated in foreign currency, public unit bond accounts and the proposed signature card requirement for joint accounts.

Authorized Signers on Single Ownership Accounts

Section 330.5(a) of the proposed amended regulations provides, *inter alia*, that if more than one person has the right to withdraw funds from an individual account (except by way of a Power of Attorney), the account will be treated as a joint ownership account, rather than as a single ownership account, and it will be insured in accordance with the provisions governing the deposit insurance afforded to joint ownership accounts. This was a proposal to codify the FDIC's existing staff position which treated such accounts as joint accounts even if they were intended to be, and were operated as, single ownership accounts

with a second individual serving as an "authorized signer" on the accounts solely for convenience purposes. The FSLIC treated such accounts, which are commonly called "convenience accounts," as single ownership accounts so long as the named account holder provided an affidavit indicating that the account was comprised solely of funds owned by that individual (that the authorized signer had no ownership interest in the funds).

In response to this proposal, the FDIC received a few letters supporting, and a few letters objecting to, the proposed treatment of "convenience accounts." Commenters who supported the proposed rule argued that it is a better rule since it would provide certainty with respect to the treatment of such accounts. Those who objected to the proposed rule argued that the proposal ignores the fact that it is a generally accepted banking practice to recognize a non-owner's authority to transact business for the owner of funds. They asserted that if an account is shown on the deposit account records of the institution as being an "individual account" and only one person has signed to indicate single ownership, the fact that one or more other persons is authorized to withdraw funds on behalf of the true owner should not cause the account to be treated as a joint ownership account. One commenter asserted that it would be impractical to require a formal Power of Attorney for each "convenience account," especially when the customer wants to provide one or more other persons with the limited right to withdraw funds from an account. Another commenter indicated that the proposed rule presents problems for "sole proprietorship" accounts, which are treated as single ownership accounts for insurance purposes. It was asserted that, although these business accounts are owned by an individual, it is often necessary for other (non-owner) employees of the business to be "authorized signers." The commenter concluded that such employees clearly do not have any ownership interests in those accounts and thus such accounts should not be treated as joint ownership accounts so long as the deposit account records clearly indicate that they are merely authorized signers.

The FDIC finds the arguments of those who oppose the proposed rule to be persuasive. Based upon their comments, the FDIC has decided to modify its proposed rule so that a single ownership account with one or more "authorized signers" is not treated as a joint ownership account when the deposit

account records clearly indicate, to the satisfaction of the FDIC, that it is an individual or single ownership account and that any other persons who are signatories on the account are merely authorized to withdraw funds on behalf of the true owner. These facts must be clearly and unequivocally stated on the deposit account records of the insured depository institution. The FDIC will not look to the source or use of the funds in an account for the purpose of determining the ownership of funds in an account.

Signature Card Requirement for Joint Ownership Accounts

Under § 330.7(c) of the proposed amended regulations, one of the requirements for a joint ownership account to qualify for separate insurance coverage is that each co-owner personally execute a deposit account signature card. This proposed rule indicates that it would not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons, but all such accounts would have to, in fact, be jointly owned. The proposal was consistent with an existing FDIC regulation and thus did not represent any change in the rules applicable to accounts at FDIC-insured banks. The proposal did, however, represent a change in the rules applicable to accounts at savings and loan institutions that were previously insured by the FSLIC (hereinafter referred to as "S&Ls") since the FSLIC's joint account regulations did not include a signature card requirement. The FSLIC did have a comparable signature card requirement for joint accounts but it was rescinded in 1988 (*See*, 53 FR 8,167, March 14, 1988).

Some commenters asserted that to require each co-owner to personally execute a signature card for a joint ownership account is unnecessary and excessive. The commenters pointed out that other evidence is frequently available in the records of a depository institution which clearly and unambiguously establishes actual ownership with or without, and not necessarily indicated by, signatures. Other commenters who opposed the proposed requirement believe a contradiction exists between this proposal and the proposed rule concerning authorized signers on single ownership accounts.

The FDIC has decided to adopt the signature card provision, as proposed,

since the FDIC continues to believe that signature cards are the most reliable indicators of deposit ownership. Although other documents or records may also serve as reliable indicators of ownership, the FDIC believes that requiring signature cards will standardize the manner in which joint ownership can be determined from an institution's deposit account records and thus will greatly simplify the process of determining whether certain accounts are jointly owned. The burden on insured institutions resulting from the adoption of this provision should not be too great. A substantial number of joint ownership accounts (those evidenced by certificates of deposit and negotiable instruments as well as a number of fiduciary accounts) will not be affected at all by this requirement. All other joint ownership accounts at FDIC-insured banks should already have signature cards since this is not a new requirement for accounts at FDIC-insured banks. In addition, the FDIC believes that quite a few S&Ls already require signature cards for all of their deposit accounts. Moreover, even for those S&Ls that do not routinely require signature cards, quite a few joint ownership accounts should have signature cards since the FSLIC's signature card requirement was rescinded only two years ago.

Testamentary (Revocable Trust) Accounts

Section 330.8(c) of the proposed amended regulations is a proposal to formally adopt, *inter alia*, the FDIC's existing staff position which is that when a husband and wife establish a revocable trust account naming themselves as the sole beneficiaries (*i.e.*, H & W in trust for H & W), the account will not be treated as a testamentary account, but rather, it will be treated as a joint ownership account and insured in accordance with the provisions governing the insurance provided for such accounts. This proposal was consistent with a staff interpretation of the FDIC's existing regulations, providing that when a husband and wife establish a testamentary (revocable trust) account naming themselves as the sole beneficiaries, the account is not a valid testamentary account and thus should be treated as a joint ownership account of the husband and wife, added to any other accounts maintained by them jointly and insured up to \$100,000. The proposal was contrary to a FSLIC staff interpretation of its regulations, under which such accounts were treated as two separate testamentary accounts and insured in the amount of up to

\$100,000 for each account, for a total of up to \$200,000.

The proposed revocable trust account provisions were, however, consistent with both the FDIC and FSLIC staff interpretations with respect to joint revocable trusts held for the benefit of others. The proposed amended regulations expressly recognized testamentary accounts established by more than one owner (settlor) when the owners are not also the sole beneficiaries of the accounts (*e.g.*, Husband & Wife in trust for Son & Daughter). Under the proposal, such accounts would be insured according to the respective interests of each owner (which are presumed to be equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each beneficiary, in the amount of up to \$100,000 for the interest of each owner as to each beneficiary. Such insurance coverage would be separate from any insurance coverage provided for other accounts maintained by the owners or the beneficiaries with the same insured depository institution. For instance, with respect to the aforementioned example (H & W in trust for S & D), the account would be insured in the amount of up to \$400,000. As noted above, this represents a codification of existing staff interpretations of both the FDIC and the former FSLIC.

Ten commenters opposed the proposed treatment of revocable trust accounts established by and for the sole benefit of a husband and wife (H & W in trust for H & W) primarily on the grounds that such accounts were established in reliance on the fact that the FSLIC provided separate insurance for the accounts and it would be unfair to eliminate that separate insurance at this juncture.

The FDIC has nonetheless decided to adopt the regulation as proposed based on its view that when a husband and wife place funds in a revocable trust account and name themselves as the sole beneficiaries thereof, they cannot be said to be holding the funds in a separate "right and capacity" since the account has the same attributes as a joint account with right of survivorship. Since section 3(m) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(m), requires the FDIC to aggregate all accounts held in the same right and capacity at one insured institution, the FDIC must aggregate joint revocable trust accounts established by and for the sole benefit of a husband and wife with any other joint ownership accounts maintained by the husband and wife at the same insured depository institution.

The adoption of this rule does not result in a decrease in the amount of deposit insurance available for depositors at any one insured depository institution. Depositors at FDIC-insured banks will not be affected by this rule since such accounts have not been afforded separate insurance coverage by the FDIC. Depositors at S&Ls can obtain the same amount of insurance by simply opening two separate accounts; one account being a revocable trust account established by the husband for the benefit of his wife (H in trust for W); the other account being a revocable trust account established by the wife for the benefit of her husband (W in trust for H).

Overfunded Pension Plan Accounts

Some commenters expressed support for, and others objected to, § 330.12(d) of the proposed amended regulations, which provides that any portion of a pension plan's deposits which is not attributable to the interests of the beneficiaries under the plan, shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to \$100,000 separately from any other deposits. This proposal was consistent with the position of the former FSLIC but contrary to the FDIC's position on insuring the overfunded portion of pension plan deposits. The FDIC has been looking to the pension plan documentation to determine, on a case-by-case basis, who has a greater ownership interest (the corporation or the employees) in the overfunded portion of the pension plan's deposits and has treated the overfunded portion as being owned in accordance with that determination. If it was deemed to be owned by the corporation, the FDIC aggregated the overfunded portion of the deposit with other corporate funds for insurance purposes. If it was deemed to be owned by the employees, each employee's share was aggregated with his/her other interests in the pension plan deposit. The FSLIC treated the overfunded portion of a pension plan deposit as a trust estate and insured that portion up to \$100,000, separately from any other funds owned by, or attributed to, the corporation or its employees.

Commenters who supported the proposed rule noted the difficulties involved in determining whether the employer or the employees has a greater ownership interest in the overfunded portion of a pension plan. Among those who opposed this provision, some maintained that overfunded amounts belong to the plan participants unless otherwise specifically indicated by the

plan. Others recommended changing the regulation to allow for an allocation of assets by the pension fund trustee in order to provide full insurance coverage to individual plan participants.

As noted in the preamble to the proposed amendments, the FDIC believes that it is often extremely difficult to determine whether the employer or the employees has a greater ownership interest in the overfunded portion of a pension plan deposit. In addition, the FDIC believes that adopting the FSLIC's position will simplify deposit insurance determinations on pension plan deposits and thus will enable the FDIC to expedite the payment of the insured portions of such deposits. Therefore, the FDIC has decided to adopt § 330.12(d) of the proposed amended regulations, which provides that the overfunded portion of a pension plan deposit will be insured in the amount of up to \$100,000 and that such deposit insurance will be separate from the insurance provided for any other funds owned by, or attributed to, the corporation or its employees, without any modifications.

Deposits Denominated in Foreign Currency

1. In § 330.3(c) of the proposed uniform regulations, the FDIC confirmed that deposits denominated in foreign currency are entitled to deposit insurance to the same extent as deposits denominated in United States dollars. That proposed provision also specified the exchange rates to be used in converting deposits denominated in foreign currency, namely, the 12 p.m. rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution.

Some commenters asserted that it would be inappropriate to specify one set of exchange rates to be used in converting foreign currency deposits since foreign currency deposit contracts may specify some other generally accepted set of exchange rates. The FDIC's regulations would then, in effect, rewrite the deposit contract for insurance purposes.

Upon reconsideration, the FDIC agrees that to the extent a deposit contract specifies the exchange rates to be used for all purposes under that contract, and the exchange rates are generally accepted exchange rates, those exchange rates should be recognized in valuing deposits for insurance purposes. Therefore, the FDIC has modified the proposed provision accordingly.

Deposits Maintained in Connection with Public Bond Issues

Section 330.14(c) of the proposed amended regulations provides as follows:

(c) *Public bond issues:* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge at maturity a debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to \$100,000. (emphasis added)

One commenter indicated that the requirement that the funds be "set aside to discharge 'at maturity' a debt owed * * *" differs from the existing FDIC regulation (12 CFR 330.8(b)) and would, in effect, disqualify funds held for interest payments and possibly funds held for periodic repayment of principal. The FDIC did not intend to so limit the insurance provided by that section and thus the words "at maturity" do not appear in the final provision.

C. Rules Governing Insurance of "457 Plan" Deposits

Proposed Rules Concerning 457 Plan Deposit Accounts

Under § 330.12(e) of the proposed amended regulations, all "457 Plan" deposits would be aggregated, added to any other deposits of like kind maintained by the same official custodian of a public unit at the same insured institution, and the total would be insured up to \$100,000. A "457 Plan" is a deferred compensation plan established for the benefit of employees of a state government, local government or tax-exempt organization, which qualifies under section 457 of the Internal Revenue Code, 26 U.S.C. 457. The proposal was based on a pre-existing FDIC staff position and thus was consistent with the manner in which such deposits in FDIC-insured banks have been insured. The proposal was, however, contrary to the manner in which 457 Plan deposits in S&Ls have been insured. Such deposits have been afforded pass-through insurance coverage (insurance coverage on a per-participant basis) pursuant to a specific FSLIC regulation.

FDIC Staff Position on 457 Plan Deposits

Although there has been no specific provision in the FDIC's deposit insurance regulations, the FDIC staff has taken the position, for more than a

decade, that deposit accounts maintained by a "457 Plan" with an insured bank are not entitled to pass-through insurance coverage. The FDIC staff's position has been based on the fact that, under section 457 of the Internal Revenue Code, the funds of 457 Plans are required to "remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer's general creditors." 26 U.S.C. 457. This provision enables the employer (i.e., the state government, local government or nonprofit organization) to utilize 457 Plan funds for its own purposes and makes those funds subject to the claims of the employer's creditors. The employer, rather than the employees, is thus deemed to be the sole owner of the funds until they are distributed.

Therefore, the FDIC staff has maintained that the employees (the participants) do not have any ownership interests in the funds upon which insurance coverage could be based and thus the funds cannot be insured on a pass-through basis. Consequently, deposit accounts at FDIC-insured banks which are comprised of 457 Plan funds have been added together and insured in the amount of up to \$100,000 in the aggregate together with other deposits of like kind maintained by the same official custodian of the same public unit.

FSLIC and NCUA Positions on 457 Plan Deposits

Prior to 1982, both the FSLIC and the NCUA staffs apparently took the same position as the FDIC staff with respect to 457 Plan deposits. Neither agency had a specific regulation which mentioned deferred compensation plan deposits, although informal discussions with staff members from both agencies in 1980 confirmed that their interpretations were the same as the FDIC staff interpretation. In other words, prior to 1982, all three insurers maintained that under their respective regulations, 457 Plan accounts were not insured on a per-participant basis.

On March 5, 1982, the Federal Home Loan Bank Board, as operating head of the FSLIC, proposed amendments to its regulations (12 CFR 561.4, 564.2, 564.10) to provide that the interest of each participant in a deferred compensation plan (including a 457 Plan) would be insured up to \$100,000. The Bank Board received 514 comments on the proposal which were overwhelmingly in favor of the proposed amendments. In fact, only

one commenter (an individual) objected to the proposal "apparently on the mistaken belief that such action would require a large and immediate outlay of taxpayers' funds."

The FSLIC's final regulations were adopted on May 6, 1982 and published in the *Federal Register* on May 14, 1982 (47 FR 20,748). In adopting the final regulations, the Bank Board recognized that "the funds in a deferred compensation plan typically remain the sole property of the employer." Nevertheless, the Bank Board decided to insure the accounts of such plans on a per-participant basis because the Bank Board concluded that "there is no substantive difference between the interest of a participant in a deferred compensation plan and the interest of a beneficiary in a trustee employee benefit plan."

The NCUA issued a final rule amending its regulations, effective July 12, 1982, to provide insurance coverage for deferred compensation plan accounts in the amount of up to \$100,000 per-participant. The final rule was published in the *Federal Register* on July 14, 1982 (47 FR 30,464). In the preamble to the final rule, the NCUA recognized that "the funds in a deferred compensation plan usually remain the sole property of the employer." The NCUA further recognized that "if the employer becomes insolvent * * * the funds would become depleted and would no longer be available to the employee." The NCUA concluded, nonetheless, that "the differences between (the interest of a participant in) a deferred compensation plan and the interest of a beneficiary in a trustee employee benefit plan are not significant." On that basis, the NCUA adopted its final rule providing insurance coverage to each individual participant in a deferred compensation plan.

Section 457 of the Internal Revenue Code

Congress enacted section 457 of the Internal Revenue Code in 1978. At that time, the stated purpose of the section was "to provide certainty with respect to unfunded deferred compensation plans maintained by State and local governments." The driving force behind the section was a desire to create a compensation plan under which public employees would receive deferred tax treatment for retirement savings. To create a compensation plan which would receive deferred tax treatment, the IRS had to rationalize the doctrine of constructive receipt with the deferred receipt nature of the plan, and the methodology utilized was an ownership

distinction. As a result, section 457 sets out the following as requirements for a plan to qualify:

(A) All amounts of compensation deferred under the plan,

(B) All property and rights purchased with such amounts, and

(C) All income attributable to such amounts, property, or rights, shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan) subject only to the claims of the employer's general creditors.

26 U.S.C. 457.

Historically, state pension plans had often been created without a trustee arrangement and the provisions of section 457 follow the tradition by requiring no trustee arrangement. Since no trustee arrangement was required, plan participants would have been taxed as funds were contributed to the plan, unless some alternative ownership provision was made. The provision that the funds belong to the plan sponsor (the employer) permits the plan participants to defer receipt of the income, and so to defer the tax on that income. This clear statement that the funds in the plan shall belong to the employer establishes the ownership rule for the funds which the FDIC must consider in providing deposit insurance coverage. An earlier Revenue Ruling of the IRS supported the rationale that the plan participants did not have constructive receipt of the funds contributed to such a plan. This ruling examined several situations in which employees received deferred compensation and found that "(a) mere promise to pay, not represented by notes or secured in any way, is not regarded as a receipt of income within the intentment of the cash receipts and disbursements method."

Other deferred compensation plans created by Congress, such as plans which qualify under section 401(k) of the Internal Revenue Code, 26 U.S.C. 401(k) ("401(k) Plans"), require trustee arrangements for the plans to qualify. The FDIC, while recognizing the trustee's legal ownership of the funds, also recognizes the plan participants' beneficial ownership interests in the funds, permitting a finding that deposit insurance may be calculated based on the interests of the plan participants.

The Public Hearing on the Proposed Rules Concerning "457 Plan" Deposit Accounts

As noted above, the overwhelming majority of comment letters received on the proposed amendments concerned the subject of pass-through insurance for 457 Plan accounts. Of the more than

3,750 comment letters received, in excess of 90% specifically referenced the issue. In view of the volume of comment letters received on the issue of providing pass-through insurance for 457 Plan deposits, the staff believed that the public would benefit from an opportunity to present opinions in an oral, give-and-take, environment. The staff also believed that the FDIC would benefit from an opportunity to pose questions to participants in order to obtain further information on various aspects of 457 Plan deposits, including the size of the market affected and the ownership rights of various parties in such deposits. For these reasons, the Board authorized, and the FDIC held, a public hearing on the subject of deposit insurance coverage for 457 Plan deposits on March 14, 1990. Twelve witnesses testified at the hearing, representing various state and municipal organizations, savings and loan associations and banks. The following discussion summarizes the issues raised and arguments made at the public hearing.

All but one of the witnesses (the IRS representative) at the hearing testified in opposition to the proposed rule. The witnesses' testimony consisted primarily of public policy arguments, rather than legal arguments. However, they asserted that the public policy issues are very significant, and find some legal basis in FIRREA's mandate to consider "all relevant factors necessary to promote safety and soundness, depositor confidence, and the stability of deposits in insured depository institutions." The major public policy arguments that were made include the following:

(1) Adoption of the proposed rule would eliminate the only safe haven for public employees to invest their 457 Plan funds and thus would discourage public employees from saving for their retirement, or would cause investment in higher risk instruments;

(2) 457 Plan accounts provide a very stable source of funding and liquidity for savings and loan institutions and adoption of the proposed rule could eliminate that stable source of funding or cause liquidity constraints by effectively requiring collateralization of existing plan deposits;

(3) Enactment of the proposed rule will cause a massive outflow of funds from numerous savings and loan institutions which may cause certain institutions to become insolvent and thus add to the inventory of the Resolution Trust Corporation ("RTC");

(4) There are no valid public policy reasons for treating 457 Plans (which benefit public employees) differently

from other deferred compensation plans, such as 401(k) plans (which benefit private employees); and

(5) The proposed rule is inconsistent with President Bush's recent initiatives which would encourage greater saving by the public (e.g., the President's proposal to establish "Family Savings Accounts").

While many of the witnesses acknowledged that 457 Plan funds are legally owned by the employer, they argued that the funds are constructively held for the benefit of the employees. To support the "constructive trust" theory, the witnesses made several points. Among them were that the employee earns the funds, controls the deferral of income, directs the investment of the funds, and benefits from any gains and suffers from any losses resulting from those investments. Also, the witnesses indicated that most employers maintain separate deposit accounts for each employee, do not commingle 457 Plan funds with other employer funds, and would not utilize 457 Plan funds for purposes other than to pay the deferred compensation.

Several witnesses made arguments which focused on the accounting treatment of 457 Plan assets. It was asserted that the public agency accounting treatment rules for 457 Plan deposits, found in the Government Accounting Standards Board ("GASB") Statement No. 2, require simultaneous disclosure of the plan as an asset and a liability of the public entity. GASB Statement No. 2 contains language which suggests that the employer has a contractual obligation to pay plan participants, that the plans are not accessible by creditors, and are not to be accessed by the public entity because a fiduciary relationship exists between the employer and the employee with respect to the funds. It was also asserted that the 457 Plan maintained by the City of New York provides that the employer is contractually obligated to return to plan participants all of their deferred funds and any interest or earnings on them. Moreover, one witness indicated that the Butte County, California, Counsel has opined that creditors cannot access the 457 Plan funds of that County, should the public entity become insolvent. This opinion was based on California law and provisions of the particular plan agreement, but there was no discussion of the tax consequences should creditors be unable to access the funds. However, the California Attorney General has opined that the State, of California would not be liable for loss of deferred compensation funds, nor would the State be liable to pay the amount of

the deferred compensation, if an insured institution in which the funds were placed became insolvent.

The IRS representative was the only witness who did not testify in opposition to the proposed rule. His testimony was based on legal, rather than public policy, grounds. He contended that the FSLIC's rule (which insured 457 Plan accounts on a per-participant basis) was based on a misunderstanding of section 457. He asserted that, under section 457 of the Internal Revenue Code, 457 Plan assets cannot be set aside for the benefit of the employees without producing immediate taxation of the employees. The employer must retain control over the deferred amounts and cannot be required to use them to pay the deferred compensation. Therefore, he asserted that 457 Plans are much different from trustee employee benefit plans (such as 401(k) Plans) and that the employees' ownership interests are not at all alike. He concluded that the FSLIC was wrong in drawing an analogy between those plans for purposes of justifying their insurance rule.

The IRS representative addressed the history of section 457, and its relationship to other employee benefit plans. Both 457 and 401(k) plans were considered by Congress in 1978; as existing public employee plans were non-trusteed, Congress codified the arrangement for consistency with existing IRS rulings and case law. The IRS representative asserted that the extension of section 457 to tax-exempt organizations was done because those organizations were not provided for in the 1978 law. He further indicated that it is unclear what legal effect the fact that the employee bears any loss under the plan has, or what effect the insolvency of the medium has, on the tax status of 457 Plans. He indicated that there has been no reported litigation on these issues.

The following additional information concerning 457 Plans and their deposits was gleaned from the witnesses at the hearing:

(1) The size of the 457 Plan market is not specifically ascertainable, but most agreed that approximately \$4-5 billion is currently invested in savings deposits nationwide under 457 Plans. Of that amount, approximately \$2.2 billion is deposited with Great Western Financial Corporation, Beverly Hills, California;

(2) The existing 457 Plans vary considerably in their basic terms, administration, investment options and the maturities of their deposit instruments;

(3) Very few plans have only the insured deposit option; most plans

average at least three investment options.

Summary of Comment Letters

More than 90% of all comment letters received by the FDIC express opinions on the proposed rules affecting 457 Plan deposits and the vast majority of those were opposed to the proposed rules. Many government units (including state and local governments and political subdivisions thereof), government employee organizations, savings and loan associations, trade organizations and numerous individuals, objected to the FDIC's proposed regulation because it provides substantially less insurance coverage than was previously provided by the FSLIC.

Most commenters advocated the adoption of the FSLIC's rule, which insured 457 Plan deposits in S&Ls on a per-participant basis rather than the FDIC's proposed rule which was to limit insurance for 457 deposits to \$100,000 in the aggregate. Some of the arguments made most frequently are as follows:

(1) Deposit insurance was an important factor in the participant's decision to participate in the deferred compensation plan and it would be unfair to eliminate that insurance at this point;

(2) Elimination of per-participant deposit insurance for 457 Plan accounts would have a serious effect on the participants' retirement plans and financial security;

(3) Adoption of the proposed rule discriminates against state and local government employees who participate in 457 Plans, and thus would not be entitled to pass-through insurance, when compared with private sector employees who participate in 401(k) plans and thus would be entitled to pass-through insurance coverage;

(4) The FDIC's proposal is in direct conflict with President Bush's efforts to encourage citizens to save more money;

Moreover, objections were expressed regarding the FDIC's literal reading of the Internal Revenue Code for determining ownership of deposits in 457 Plan accounts. Some commenters suggested that practical and public policy reasons exist for recognizing that such funds "constructively" belong to the employees (participants) and thus should be insured on a per-participant basis, similarly to other types of pension plan accounts. Other objections to the proposed rule emphasized the potential disintermediation of funds out of S&Ls which would otherwise be used to fund existing assets and would result in an increase in their overall cost of obtaining funds. Numerous commenters

urged the FDIC to adopt some type of "grandfather" provision for the benefit of those adversely affected by the new rule.

Final Rule on 457 Plan Deposits

A review of the comment letters and the testimony presented at the public hearing has resulted in no change in the staff's legal analysis of the extent to which the FDIC can provide pass-through insurance for 457 Plan deposits. The staff continues to believe that existing law precludes the FDIC from providing pass-through insurance for such deposits. As noted above, testimony by a representative of the IRS supported the staff's legal interpretation of the language in section 457 of the Internal Revenue Code. The FDIC is required by section 3(m)(1) of the Federal Deposit Insurance Act to aggregate, for insurance purposes, all deposits held in the same right and capacity. The phrase "right and capacity" relates to the manner in which funds are legally owned. The employee benefit plans under discussion are created to qualify under section 457 of the Internal Revenue Code and thus the FDIC must assume that qualified plans are structured to provide ownership interests as required by that section of the tax code. As noted above, the statutory mandate of section 457 is clear: the assets of the plans are owned by the employer (*i.e.*, the state government, local government, or nonprofit organization) that sponsors the plan.

However, the FDIC is mindful of FIRREA's mandate that, in promulgating the uniform regulations, the FDIC must consider all relevant factors necessary to promote safety and soundness, depositor confidence, and the stability of deposits in insured institutions. This requirement, and the testimony presented at the public hearing, suggest that the FDIC should not adopt a final rule which results in an immediate outflow of funds from S&Ls which maintain 457 Plan accounts. The FDIC believes that adopting the rule as proposed but including a lengthy "grandfather" period for existing 457 Plans addresses the legal constraints as well as some of the policy concerns.

The staff initially recommended that the Board of Directors adopt a "grandfather" provision which would continue to provide pass-through insurance coverage for 457 Plan deposits in S&Ls until January 29, 1992 or the first maturity date of any time deposit after that date. The staff proposal, however, was to "grandfather" only those deposit accounts in S&Ls maintained by 457 Plans for the benefit of individuals who

were participants as of July 29, 1990 (the effective date of the regulations). In other words, under the initial staff proposal, any 457 Plan funds deposited for a person who was not a participant prior to July 29, 1990 would not have been insured on a pass-through basis after the effective date.

However, at a public meeting on April 30, 1990, members of the FDIC's Board of Directors expressed concern about the potential effect of the staff proposal on the liquidity of certain savings and loan associations that have a substantial amount of 457 Plan funds on deposit. The Board members indicated their concern about the massive outflow of funds that could potentially result from adoption of the staff proposal to apply the "grandfather" provision only to accounts established for existing 457 Plan participants. The Board felt that, in light of FIRREA's mandate to promote safety and soundness, depositor confidence and the stability of deposits in insured institutions, the "grandfather" provision should be applied to both existing and new participants in 457 Plans until January 29, 1992 or the first maturity date of any time deposit after that date.

The Board believed that the staff proposal was confusing in that it was difficult to understand the extent to which the "grandfather" provision would apply to 457 Plan deposits. The Board was concerned that this confusion could result in a loss of confidence by depositors and a concomitant outflow of funds. In addition, the sponsors of several 457 Plans asserted that it would take state legislative action and an extended period of time to amend their plans so as to provide alternative investment options for new participants. Moreover, some indicated that it would be very difficult to maintain records indicating which deposits were fully insured (since they were solely comprised of funds for existing participants) and which deposits were partially or wholly uninsured (because they were comprised of funds for at least some new participants). For these reasons, the Board voted to modify the staff's proposed "grandfather" provision to include both existing and new participants in 457 Plans.

As a result of the Board's action, the "grandfather" provision in the final rule is structured as follows. For 18 months following the effective date of the final regulations, or the earliest maturity date of any time deposit thereafter, any funds of an existing 457 Plan which are deposited in an S&L continue to be covered on a per-participant or pass-through basis. This means that for

existing 457 Plans (those in existence prior to the effective date) any account balances, any new money deposited and any interest earned within 21 months following adoption of these rules (up until January 29, 1992) will continue to be insured on a pass-through basis until January 29, 1992, or, in the case of a time deposit, the first maturity date thereafter.

Any new money deposited after January 29, 1992 will not be insured on a pass-through basis. Any 457 Plan time deposits that mature prior to January 29, 1992 and that are renewed on the same terms and conditions will continue to be insured on a pass-through basis until January 29, 1992 or the first maturity date thereafter. Any rollovers subsequent to January 29, 1992 will no longer be insured on a pass-through basis.

The FDIC believes that this extended "grandfather" period is warranted given the drastic consequences that would result if most of the \$4-5 billion dollars in 457 Plan deposits were to become uninsured after only 90 days. The extended "grandfather" period will permit ample time for plan participants and participating S&Ls to adjust to the new rules. In addition, to the extent that there are compelling public policy reasons to provide pass-through insurance for 457 Plan deposits, Congress will have time to enact legislation to insure them if it so desires.

D. Rules Governing Insurance of Mortgage Servicing Accounts

Types of Custodial Accounts Maintained by Mortgage Servicers

Mortgage servicers for the Government National Mortgage Association ("Ginnie Mae"), the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), as well as other (private) mortgage servicers, maintain deposit accounts at numerous insured depository institutions. Two basic types of accounts have typically been maintained by mortgage servicers. One type of account is comprised of principal and interest ("P&I") payments received by the mortgage servicer from numerous mortgagors (borrowers). The P&I payments are generally held in the deposit account until they are remitted by the mortgage servicer, on a designated date, directly to the holders of Ginnie Mae, Fannie Mae and Freddie Mac securities or to the owners of the mortgages (the mortgagees). The other type of account is comprised of tax and insurance ("T&I") payments received by

the mortgage servicer from numerous mortgagors. The T&I payments are held in the deposit account until they are used to pay, on behalf of the mortgagors, taxes and insurance premiums due on the properties securing the pooled mortgages.

Differences Between FDIC and FSLIC Insurance Rules

The FDIC's regulations have not expressly indicated the manner in which such accounts would be insured by the FDIC. Since the accounts are custodial in nature, the FDIC has treated them as custodial accounts and has taken the position that, to the extent that each individual owner (mortgagee, investor or holder of Ginnie Mae, Fannie Mae or Freddie Mac securities) has an ownership interest in the P&I accounts, such interests will be recognized for deposit insurance purposes. Therefore, the FDIC has taken the position that P&I accounts are insured in the amount of up to \$100,000 for the ownership interest of each owner or investor (security holder) in such accounts, provided that the FDIC's recordkeeping requirements are satisfied. The FDIC has further indicated that if an owner or investor has interests in more than one P&I account, those interests would normally be aggregated for insurance purposes. In addition, if an owner maintains individually-owned (single ownership) accounts, or corporate accounts if the owner is a corporation, at the same insured institution, the owner's interests in the P&I account(s) would also be aggregated with those other accounts for deposit insurance purposes.

With respect to the T&I accounts, the FDIC has taken the position that such accounts are insured up to \$100,000 for the interest of each individual mortgagor in the accounts, provided that the FDIC's recordkeeping requirements are satisfied. However, if a single mortgagor has interests in more than one T&I account at the same insured bank, those interests have been aggregated for insurance purposes. Moreover, to the extent that a mortgagor maintained individually-owned (single ownership) accounts at the same insured institution, his/her interests in the T&I account(s) would be added to those single ownership accounts, for deposit insurance purposes, prior to applying the \$100,000 insurance limit.

The FSLIC had a specific regulation (12 CFR 564.3(b)(2)) which provided that "(a) loan servicer who receives loan payments and places or maintains such payments in an insured institution prior to remittance to the lender or other parties entitled to the funds shall, for insurance-of-accounts purposes, be

considered an agent of each borrower." Pursuant to that regulation, P&I and T&I accounts were insured by the FSLIC in the amount of up to \$100,000 for the interest of each individual mortgagor in such accounts. Such insurance coverage was provided, however, only if certain recordkeeping regulations (12 CFR 564.2(b)) were satisfied. Moreover, if a mortgagor had interests in more than one mortgage servicing account or had any other individually-owned (single ownership) accounts, those interests/accounts were all aggregated for deposit insurance purposes.

Treatment of Accounts Subsequent to Enactment of FIRREA

Section 402(d) of FIRREA required the FDIC to insure P&I and T&I accounts maintained at all insured depository institutions in the amount of up to \$100,000 per-mortgagor, on an interim basis, until the effective date of these proposed uniform regulations. Accordingly, the deposit insurance for both P&I and T&I accounts provided by the FDIC for deposits in all FDIC-insured banks since the date of enactment of FIRREA has been the same as that provided by the FSLIC for deposits in FSLIC-insured savings institutions prior to the enactment of FIRREA.

The Proposed Rules Concerning Mortgage Servicing Accounts

The proposed amended regulations provided that custodial accounts maintained by mortgage servicers which are comprised of P&I payments would be insured in the amount of up to \$100,000 per-owner (mortgagee, investor or security holder) and those comprised of T&I payments would be insured in the amount of up to \$100,000 per-mortgage borrower, provided that the FDIC's proposed amended recordkeeping requirements were satisfied. This proposed provision was based on the FDIC's belief that the mortgagees, investors or security holders, and not the mortgagors (borrowers), have an ownership interest in P&I accounts, and the mortgagors have an ownership interest in T&I accounts, which are maintained by mortgage servicers for their benefit at various insured depository institutions. Since the accounts are custodial in nature, the proposed rule provided that any interests an individual has in those accounts would be aggregated with any individually owned (single ownership) account(s) that the individual may have at the same insured depository institution, under the proposed amended regulations.

Comments Received on the Proposed Rule

In response to the proposed amendments, the FDIC received approximately 52 comment letters which expressed opinions on the proposed rules concerning insurance for mortgage servicing accounts. Although some supported the FDIC's proposed treatment of P&I accounts, the vast majority of those letters emphasized the policy arguments in favor of retaining the FSLIC treatment of P&I accounts (insuring them on a per mortgagor basis) in the uniform regulations. The letters recited four primary concerns with the proposed regulation: (1) It would result in a substantial loss of low-cost deposits to S&Ls which would cause additional thrift failures, increasing RTC's liability and posing an increased risk to the Savings Association Insurance Fund ("SAIF"); (2) it would result in higher mortgage rates for consumers since S&Ls will experience a higher cost of funds and the value of mortgage servicing rights will decrease; (3) it will be difficult to administer since the identity of investors in mortgage-backed securities is very difficult to determine; and (4) the aggregation portion of the rule is unfair since investors and mortgagors do not know and cannot control where the mortgage servicing accounts are maintained. Finally, the majority of comments received regarding the insurance coverage for P&I accounts expressed support for some type of "grandfather" provision in order to allow S&Ls, corporations and mortgage servicers to avoid a reduction in insurance coverage caused by their reliance on the old rules.

Final Rule on Mortgage Servicing Accounts

After careful consideration of all of the comment letters and several meetings with representatives from the mortgage banking industry, the FDIC has decided to adopt its proposed rule but to provide Ginnie Mae, Freddie Mac, Fannie Mae, mortgage servicers and S&Ls that have mortgage servicing accounts some additional time to make whatever changes to their accounts they deem necessary as a result of the final rules.

The FDIC believes that it is compelled to adopt the rule, as proposed, since it best reflects the ownership interests of the parties involved in mortgage servicing accounts. The proposal, and the underlying FDIC staff position, has been based on a legal analysis of the ownership interests of the various parties involved in mortgage servicing

accounts. With respect to P & I accounts, the staff has concluded, based upon the laws and contracts it has reviewed, that the owner, mortgagee or investor has a greater ownership interest in the funds than the mortgagors. With regard to P & I accounts, once payment is made to the servicer or lender, the mortgagor no longer has any interest whatsoever in those funds. For example, under most contracts, the mortgagor would not be liable to the mortgagee or investor if his/her payment were lost or misdirected by the servicer since the servicer is the mortgagee's agent. In the staff's experience, it is the mortgagee or investor who possesses the only legitimate claim to the funds maintained in a P & I account and, as such, possesses the ownership interest in the account.

The FDIC has recognized, however, that there may be some state laws and/or contracts which provide the mortgagor with a greater ownership interest in P & I accounts (although the FDIC staff has not become aware of any such laws/contracts). For example, some laws and/or contracts could make the mortgagor liable to the mortgagee or investor if his/her payment were lost or misdirected by the servicer. In order to cover these situations (which the staff believes are quite rare), the FDIC considered qualifying the final rule so that there would be an exception for those cases. The idea of creating an exception for such situations was dropped because it was felt that such an exception could have a perverse effect on mortgagors; it might cause servicers to modify their contracts to make the consumer (the mortgagor) liable for lost or misdirected payments for the purpose of increasing insurance coverage for mortgage servicing accounts.

Therefore, the FDIC has decided to adopt its proposed rule which provides insurance coverage for P & I accounts on a per-mortgagee, investor or security holder basis. The FDIC is, however, sensitive to the policy arguments against the proposed rule that were outlined by numerous commenters. We recognize that this change in the insurance rules for S&Ls may result in a disintermediation of funds from certain S&Ls who are involved in the mortgage servicing business. In order to address those concerns, and to comply with the Congressional mandate that the FDIC consider all relevant factors necessary to promote safety and soundness, depositor confidence, and the stability of deposits in insured depository institutions, the FDIC has decided to "grandfather" the insurance on all mortgage servicing accounts for an

additional 90 days beyond the effective date of the final regulations (for a total of 180 days from the date the regulations were adopted). This means that any mortgage servicing accounts existing as of the effective date of these regulations will continue to be insured under the rules currently applicable to such accounts until October 27, 1990, which is 90 days after the effective date of these uniform regulations.

E. Delayed Effective Date and Grandfather Provisions

Section 402(c)(5)(B) of FIRREA requires that the uniform deposit insurance regulations "take effect on or before the end of the 90-day period beginning on the date such regulations become final." In accordance with that provision, the FDIC indicated in the proposed amended regulations that it intended to establish an effective date for the final regulations which would be 90 days from the date that the final regulations are published in the **Federal Register**. Upon further consideration, the FDIC believes that the date that the regulations became "final" is the date that the FDIC Board of Directors adopted the regulations in final form (which was April 30, 1990) rather than the date of publication of this notice. Accordingly, the effective date for these regulations is July 29, 1990, which is 90 calendar days from April 30, 1990. The FDIC believes that this is the latest delayed effective date permitted under section 402(c)(5)(B) of FIRREA.

Delaying the effective date for the maximum amount of time permitted under the statute, maximizes the time that depositors will have to learn about the changes in the deposit insurance rules and to make whatever changes in their accounts are necessary to avoid being in an uninsured position. The FDIC realizes, however, that some depositors who are adversely affected by the changes in the deposit insurance rules will have time deposits with maturity dates beyond the effective date of the amended regulations. Such depositors would then most likely be forced to choose between continuing to maintain their deposits which, as a result of the amended regulations, would be partially or wholly uninsured, or withdrawing the uninsured funds and paying a substantial early withdrawal penalty. In order to avoid placing depositors in such a difficult position, the FDIC proposed to adopt some type of "grandfather" provision for time deposits. The FDIC indicated in its proposal that it was inclined to provide in the final regulations that any time deposit which is issued by an insured depository institution on or before the

date that the final uniform regulations are published in the **Federal Register** would be entitled to the deposit insurance provided under the regulations currently in existence (the "old rules") or that which is provided under the amended regulations (the "new rules"), whichever is more favorable to the depositor, until the first maturity date of the time deposit. The FDIC indicated in the proposal that it was interested in receiving comments on the subject of what would constitute an appropriate "grandfather" provision.

The majority of all comment letters received by the FDIC expressed support for some type of "grandfathering" of insurance coverage for pre-existing time deposits. Some of those letters advocated a longer "grandfather" period, arguing that more time (beyond ninety days after the effective date) is necessary for both insured institutions and the public to adjust to the effects of the new uniform rules. Others urged the FDIC to extend "grandfather" privileges to all pre-existing accounts, not just those evidenced by certificates of deposit. Some commenters argued that the "grandfather" provision should be broadened to include accounts comprised of specific types of funds, e.g., mortgage servicing accounts.

After reviewing the comment letters, the FDIC believes that a more liberal "grandfather" provision than was initially proposed is appropriate so that insured institutions and their customers have additional time to become aware of the rule changes and act upon them. The initial proposal was to "grandfather" the insurance for any time deposits issued prior to the date that the final regulations are published in the **Federal Register**. The FDIC has now decided to "grandfather" the insurance for any time deposit issued on or before the effective date of the final regulations (which is July 29, 1990) until the first maturity date of the time deposit after the effective date of the regulations. The FDIC believes that this gives insured depository institutions and their customers ample time to learn of the rule changes and to make any necessary changes in their accounts to avoid being in an uninsured position. This also addresses FIRREA's mandate to promote safety and soundness, depositor confidence and the stability of deposits in insured institutions. The "grandfather" provision applies only to deposits evidenced by certificates of deposit, although there are special "grandfather" provisions provided for 457 Plan accounts and mortgage servicing accounts (which are discussed above).

F. Notice to Depositors of Changes in Deposit Insurance

The Proposed Notification

Section 402(c)(5)(A) of FIRREA requires that the uniform deposit insurance regulations provide for "effective notice to depositors in insured depository institutions of any change in deposit insurance coverage which would result under such regulations." Accordingly, the FDIC sought comment on proposed alternative methods of notifying depositors. One proposed method was to require inclusion of a simple notice in two consecutive monthly statements of account informing depositors that changes in deposit insurance coverage have been made and directing depositors to their respective depository institutions or the FDIC for more information. The other method was to include more detailed printed materials describing the coverage changes in two monthly statements. The proposal indicated that such materials could be developed solely by the depository institution or by the depository institution following a prototype provided by the FDIC, or they could be produced and provided for distribution by the FDIC. The FDIC also sought comments on whether any notice of coverage changes should vary according to type of depositor and whether each depository institution should be required to designate one person to respond to insurance coverage inquiries.

Summary of Comment Letters

Approximately 70 insured depository institutions submitted comment letters addressing the proposed notification provisions. Most of the commenters expressed concern about the potential costs of providing notification to all depositors. Virtually all commenters opposed as wasteful the idea of mailing two notices to all depositors. Many commenters suggested that the FDIC should prepare and distribute the actual notice. Some recommended making extra copies available in depository institution lobbies or in response to telephone requests.

It was noted by a number of commenters that a bare-bones notice which states only that changes have been made in insurance coverage is more likely to generate customer anxiety than a notice which clearly sets out the changes and identifies who is affected by them. Some indicated that notices which are only published in newspapers or posted in the lobbies of depository institutions would not be effective. It was asserted that such notices are not guaranteed to reach all customers, nor,

because of their brevity, could they sufficiently inform customers of the most important coverage changes.

A number of institutions requested that the FDIC give them the latitude to personalize their communication with customers and also satisfy certain mailing criteria for greater cost effectiveness. Some suggested that an FDIC prototype guarantees uniformity and saves on costs. Not surprisingly, in the few instances where commenters prepared rough calculations of costs, production expenditures appeared to occupy the biggest portion of the estimate.

There was practically no support for the idea that each institution designate one person to respond to deposit insurance coverage inquiries. Most who opposed the idea characterized it as unreasonable and unnecessary. Many institutions expect all of their banking staff to be able to field such inquiries. Others prefer to have the flexibility to move the function from one staff member to another. A handful of commenters opposed the idea because too few of their staff members are knowledgeable about deposit insurance coverage. These institutions felt that the FDIC should shoulder the entire burden of responding to inquiries through a toll-free "800" hotline. Nearly all institutions would appreciate a toll-free hotline as at least a supplement to the information they provide to customers.

The proposal that the FDIC impose separate notice requirements on different depositors was almost universally rejected as unworkable and unwise. The few commenters who supported the "depositor differentiation rule" contend that only people affected by the coverage changes should be notified. Other commenters asserted that there is no economical way for them to differentiate customers and noted that sending a notice to all depositors assures full disclosure, equal treatment, and notification to those depositors whose accounts may fluctuate considerably over time.

A few commentators urged the FDIC to require notice to depositors, as distinguished from account holders, to avoid duplication in mailing.

A small number of commentators argued that mailing the notice after the effective date of the regulations would not afford timely notice for depositors to reconfigure their deposits to ensure maximum insurance coverage.

The Final Notification Requirements

After reviewing the comment letters, it became clear that the FDIC had to balance its desire to provide the most complete notice possible with the need

to limit the costs to insured depository institutions of providing such notice. The FDIC believes that the requirement to provide "effective notice" to depositors of changes in deposit insurance coverage resulting from the adoption of the uniform regulations, in a cost-efficient manner, would be best accomplished by providing to each depository institution a relatively short, camera-ready, prototype summary notice of the changes in coverage. The FDIC will provide the notice to each depository institution, by way of a financial institutions letter, thereby insuring uniformity and accuracy; the institutions will then be required to reproduce and distribute the short notice at their own expense. The notice will be easy to read and will make clear that the basic rules concerning the amount of available insurance coverage have not changed.

The FDIC is requiring all insured depository institutions to send this notice to all depositors in a one-time mailing. For those depositors who receive a monthly or quarterly statement of account, the notice must be included in a statement at the earliest opportunity after the final rule is published, but not later than July 29, 1990. For depositors who do not receive a monthly or quarterly statement, each institution is required to mail them the notice in the same time frame or, in the case of a time deposit, at least prior to the maturity of the deposit. The same prescribed notice must be sent to all depositors; the notice may not vary in content according to the type of depositor or his or her account balance.

The FDIC is *not* requiring depository institutions to designate one individual to respond to deposit insurance coverage inquiries, as was proposed, since there was practically no support for this idea from the commenters and it would be very difficult to adequately train these individuals.

The FDIC believes that these notification provisions (which are less onerous than what was initially proposed) satisfy the mandate to provide "effective notice" of the changes while also minimizing the costs to insured institutions of providing such notification. Providing a notice to each depositor through the mails will most likely be more effective than simply publishing the final rules in the *Federal Register*, printing a notice in major newspapers or posting notices in the lobbies of all insured depository institutions. Providing a prototype satisfies the request of some institutions that they be given the latitude to personalize their communication with

customers and also satisfies certain mailing criteria for greater cost effectiveness. An FDIC-prepared prototype guarantees uniformity and also saves on costs.

In addition to the notice of changes which insured depository institutions must send out, the FDIC is in the process of preparing a revised pamphlet explaining deposit insurance coverage which will replace the FDIC's existing pamphlet, entitled "Your Insured Deposit," and the pamphlet of the former FSLIC, entitled "Protecting Your Savings." The new pamphlets are currently being printed and will be made available to all insured institutions in the near future. The FDIC will be making these pamphlets available to insured institutions to distribute in any manner deemed appropriate by the institutions. There is, however, no requirement that these pamphlets be distributed. In addition to these pamphlets, the FDIC will be dedicating additional staff members to handle the increased volume of telephone calls and letters we anticipate receiving as a result of the final regulations.

Withdrawal of Earlier Proposal Concerning Unit Investment Trusts

Pursuant to a petition for a rulemaking, the FDIC published a proposed rule on October 12, 1988 (53 FR 39,746) which, had it been adopted, would have resulted in unit investment trust deposits being insured on a pass-through basis in the amount of up to \$100,000 for the interest of each investor in the deposits. The comments received by the FDIC in response to that proposal provided no compelling reasons why the FDIC should afford pass-through deposit insurance coverage for unit investment trust deposits at FDIC-insured banks. Moreover, Congress had expressed concern about such an expansion of the scope of deposit insurance coverage. For these reasons, in the proposed uniform regulations, the FDIC proposed to maintain the current level of deposit insurance for unit investment trust deposits at FDIC-insured banks (which is up to \$100,000 in the aggregate) and, for the sake of uniformity, apply this rule to deposits at all FDIC-insured depository institutions (including savings institutions that were previously insured by the FSLIC).

In response to this proposal, the FDIC did not receive many comments, either for or against the proposed treatment of unit investment trust deposits. The FDIC did, however, receive numerous comments on this issue in response to a solicitation of comments which was done as part of the FDIC's study on pass-through deposit insurance. The

FDIC conducted the study pursuant to section 220(b)(2) of FIRREA which required the FDIC to prepare a report for Congress containing the FDIC's findings and recommendations concerning, *inter alia*, the pass-through of deposit insurance to individual investors in unit investment trusts. The FDIC's report to Congress on pass-through deposit insurance was delivered to Congress on February 7, 1990.

In the report to Congress, the FDIC concluded that although affording pass-through insurance to unit investment trust deposits would probably not pose any significant threat to individual institutions or the insurance funds, there are no good public policy reasons to extend pass-through insurance protection to such deposits. The report noted that units in unit investment trusts are sold to sophisticated investors who are not in need of the protection afforded by deposit insurance. The report further indicated that the line drawn at present is reasonably clear and denying pass-through insurance coverage to unit investment trust deposits appears well-grounded in public policy. Therefore, the report concluded that is no reason to change current deposit insurance rules which deny pass-through insurance for unit investment trust deposits.

Based on the comment letters received, and the findings contained in the report to Congress, the FDIC has decided to withdraw its earlier proposal to extend pass-through insurance coverage to unit investment trust deposits.

Revocation of Part 331

The FDIC is revoking part 331 of its Rules and Regulations (22 CFR part 331) and incorporating the provisions thereof into these uniform regulations, as proposed. Under the uniform regulations, the allocation provisions of part 331 are incorporated, with some slight modifications, into § 330.10. In addition, the FDIC is applying the allocation provisions to funds of banks or trust companies held in a fiduciary capacity under a type of trust created to facilitate the issuance, distribution, or servicing of corporate bonds, debentures or stock issues (commonly known as "corporate trusts"). The allocation rules have heretofore been inapplicable to such deposits pursuant to § 331.1(c) of the pre-existing regulations. The FDIC now believes that there is no compelling reason why the same allocation rules that apply to other trusts should not apply to corporate trusts.

Revocation of FSLIC Insurance Regulations

In the preamble to the proposed amendments, the FDIC indicated that it was proposing to issue one set of uniform deposit insurance regulations which would govern the accounts at all insured depository institutions, including savings associations that were previously insured by the FSLIC. Although it was not expressly stated, it was clearly implied that the FSLIC's deposit insurance regulations would be revoked in conjunction with the adoption of these uniform regulations. The FDIC believes that the Federal Register notice containing proposed amendments did provide sufficient notice of its intent to revoke the FSLIC's deposit insurance regulations since it was clearly indicated that the proposed uniform regulations would apply to deposits in all insured depository institutions, including savings associations that were previously insured by the FSLIC. Therefore, the final amendments revoke the FSLIC's deposit insurance regulations (except for the claims determination procedures), 12 CFR part 564, which have been transferred to the FDIC and redesignated as 12 CFR part 386 (*See*, 54 FR 42,799, October 18, 1989).

Regulatory Flexibility Act Statement

The Board of Directors of the FDIC hereby certifies that the amended regulations will not, if promulgated, have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The amended regulations modify the rules governing the deposit insurance coverage provided for certain depositors in banks and savings institutions of all sizes. The amendments do not, however, impose any additional regulatory burdens on banks or savings institutions of any size. In light of the above-noted certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects

12 CFR part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations.

12 CFR Part 331

Bank deposit insurance, Banks, Banking, Trusts and trustees, Savings and loan associations.

12 CFR Part 386

Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations.

For the reasons set forth above, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330, part 331 and part 386 of Title 12 of the Code of Federal Regulations as follows:

PART 331—[REMOVED]

1. Part 331 is removed and reserved.

PART 386—SETTLEMENT OF INSURANCE

2. The authority citation for part 386 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 386.2–386.13; Appendix [Removed]**§ 386.1 [Amended]**

3. Part 386 is amended by removing §§ 386.2 through 386.13; by removing the Appendix; by removing and reserving paragraphs (a) through (c) of § 386.1.

4. Part 330 is revised to read as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

Sec.

- 330.1 Definitions.
- 330.2 Authority and purpose.
- 330.3 General principles.
- 330.4 Recognition of deposit ownership and recordkeeping requirements.
- 330.5 Single ownership accounts.
- 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.
- 330.7 Joint ownership accounts.
- 330.8 Revocable trust accounts.
- 330.9 Accounts of a corporation, partnership or unincorporated association.
- 330.10 Accounts held by insured depository institutions in fiduciary capacities.
- 330.11 Irrevocable trust accounts.
- 330.12 Employee benefit plan accounts.
- 330.13 IRA and Keogh accounts.
- 330.14 Public unit accounts.
- 330.15 Notice to depositors.
- 330.16 Effective dates.

Authority: 12 U.S.C. 1813, 1817, 1821, 1822.

§ 330.1 Definitions.

For the purposes of this part:

(a) *Act* means the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*).

(b) *Default* has the same meaning as provided under section 3(x) of the Act (12 U.S.C. 1813(x)).

(c) *Deposit* has the same meaning as provided under section 3(l) of the Act (12 U.S.C. 1813(l)).

(d) *Deposit account records* means account ledgers, signature cards, certificates of deposit, passbooks, corporate resolutions authorizing accounts in the possession of the insured depository institution and other books and records of the insured depository institution, including records maintained by computer, which relate to the insured depository institution's deposit taking function, but does not mean account statements, deposit slips, items deposited or cancelled checks.

(e) *FDIC* means the Federal Deposit Insurance Corporation.

(f) *Insured deposit* has the same meaning as that provided under subsection 3(m)(1) of the Act (12 U.S.C. 1813(m)(1)).

(g) *Insured depository institution* is any depository institution whose deposits are insured pursuant to the Act, including a foreign bank having an insured branch.

(h) *Insured branch* means a branch of a foreign bank any deposits in which are insured in accordance with the provisions of the Act.

(i) *Natural person* means a human being.

(j) *Trust funds* means funds held by an insured depository institution as trustee, executor, administrator, guardian, agent or in any other fiduciary capacity.

(k) *Trust estate* means the determinable and beneficial interest of a beneficiary or principal in trust funds but does not include the beneficial interest of an heir or devisee in a decedent's estate.

§ 330.2 Authority and purpose.

Section 402(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 ("FIRREA"), requires the FDIC to promulgate uniform deposit insurance regulations for deposits in all insured depository institutions, taking into account the regulations, principles and interpretations for deposit insurance coverage established by the former Federal Savings and Loan Insurance Corporation ("FSLIC"). In addition, subsection 3(m) of the Act (12 U.S.C. 1813(m)) vests the Board of Directors of the FDIC with the authority to clarify and define, by regulation, the extent of deposit insurance coverage resulting from subsections 3(m)(1), 3(p), 7(i) and 11(a) of the Act (12 U.S.C. 1813(m)(1), 1813(p), 1817(i), 1821(a)), and to define

the terms used in those sections. Section 12(c) of the Act (12 U.S.C. 1822(c)) authorizes the Board of Directors, by regulation, to recognize as the owner of any portion of a deposit appearing on the records of an insured depository institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of the institution as part owner of the deposit. The purpose of this part is to clarify the rules and define the terms employed in affording deposit insurance coverage under the Act and provide rules for the recognition of deposit ownership in various circumstances.

§ 330.3 General principles.

(a) *Ownership rights and capacities.* The insurance coverage provided by the Act and the regulations in this part is based upon the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits in an insured depository institution which are maintained in the same right and capacity (by or for the benefit of a particular depositor or depositors) shall be added together and insured in accordance with the regulations in this part. Deposits maintained in different rights and capacities, as recognized under this part, shall be insured separately from each other.

(b) *Deposits maintained in separate insured depository institutions or in separate branches of the same insured depository institution.* Any deposit accounts maintained by a depositor at one insured depository institution are insured separately from, and without regard to, any deposit accounts that the same depositor maintains at any other separately chartered and insured depository institution, even if two or more separately chartered and insured depository institutions are affiliated through common ownership. The deposit accounts of a depositor maintained in the same right and capacity at different branches or offices of the same insured depository institution are not separately insured; rather they shall be added together and insured in accordance with the regulations in this part.

(c) *Deposits maintained by foreigners and deposits denominated in foreign currency.* The availability of deposit insurance is not limited to citizens and residents of the United States. Any person or entity that maintains deposits in an insured depository institution is entitled to the deposit insurance provided by the Act and the provisions of this part. In addition, deposits denominated in a foreign currency shall

be insured in accordance with the provisions of this part. Deposit insurance for such deposits shall be determined and paid in the amount of United States dollars that is equivalent in value to the amount of the deposit denominated in the foreign currency as of close of business on the date of default of the insured depository institution. The exchange rates to be used for such conversions are the 12 PM rates (the "noon buying rates for cable transfers") quoted for major currencies by the Federal Reserve Bank of New York on the date of default of the insured depository institution, unless the deposit agreement specifies that some other widely recognized exchange rates are to be used for all purposes under that agreement, in which case, the rates so specified shall be used for such conversions.

(d) *Deposits in insured branches of foreign banks.* Deposits in an insured branch of a foreign bank which are payable by contract in the United States shall be insured in accordance with the provisions of this part, except that any deposits to the credit of the foreign bank, or any office, branch, agency or any wholly owned subsidiary of the foreign bank, shall not be insured. All deposits held by a depositor in the same right and capacity in more than one insured branch of the same foreign bank shall be added together for the purpose of determining the amount of deposit insurance.

(e) *Deposits payable solely outside of the United States.* Any obligation of an insured depository institution which is payable solely at an office of such institution located outside the States of the United States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, is not a deposit for the purposes of this part.

(f) *International banking facility deposits.* An "international banking facility time deposit," as defined by the Board of Governors of the Federal Reserve System in Regulation D (12 CFR 204.8(a)(2)), or in any successor regulation, is not a deposit for the purposes of this part.

(g) *Continuation of separate deposit insurance after merger of insured depository institutions.* Whenever the liabilities of one or more insured depository institutions for deposits shall have been assumed by another insured depository institution, whether by merger, consolidation, other statutory assumption, or contract:

(1) The insured status of the institutions whose liabilities have been

so assumed terminates on the date of receipt by the FDIC of satisfactory evidence of such assumption, and

(2) The separate insurance of deposits so assumed continues for six months from the date such assumption takes effect or, in the case of a time deposit, the earliest maturity date after the six-month period.

In the case of time deposits which mature within six months of the date such deposits are assumed and which are renewed at the same dollar amount (either with or without accrued interest having been added to the principal amount) and for the same term as the original deposit, the separate insurance is applicable to the renewed deposits until the first maturity date after the six-month period. Time deposits that mature within six months of the deposit assumption and that are renewed on any other basis, or that are not renewed and thereby become demand deposits, are separately insured only until the end of the six-month period.

(h) *Application of state or local law to deposit insurance determinations.* In general, deposit insurance is for the benefit of the owner or owners of funds on deposit. However, while ownership under state law of deposited funds is a necessary condition for deposit insurance, ownership under state law is not sufficient for, or decisive in, determining deposit insurance coverage. Deposit insurance coverage is also a function of the deposit account records of the insured depository institution, of recordkeeping requirements, and of other provisions of this part, which, in the interest of uniform national rules for deposit insurance coverage, are controlling for purposes of determining deposit insurance coverage.

(i) *Determination of the amount of a deposit—(1) General rule.* The amount of a deposit is the balance of principal and interest unconditionally credited to the deposit account as of the date of default of the insured depository institution, plus the ascertainable amount of interest to that date, accrued at the contract rate (or the anticipated or announced interest or dividend rate), which the insured depository institution in default would have paid if the deposit had matured on that date and the insured depository institution had not failed. In the absence of any such announced or anticipated interest or dividend rate, the rate for this purpose shall be whatever rate was paid in the immediately preceding payment period.

(2) *Discounted certificates of deposit.* The amount of a certificate of deposit sold by an insured depository institution at a discount from its face value is its

original purchase price plus the amount of accrued earnings calculated by compounding interest annually at the rate necessary to increase the original purchase price to the maturity value over the life of the certificate.

(3) *Waiver of minimum requirements.* In the case of a deposit with a fixed payment date, fixed or minimum term, or a qualifying or notice period that has not expired as of such date, interest thereon to the date of closing shall be computed according to the terms of the deposit contract as if interest had been credited and as if the deposit could have been withdrawn on such date without any penalty or reduction in the rate of earnings.

§ 330.4 Recognition of deposit ownership and recordkeeping requirements.

(a) *Recognition of deposit ownership—(1) Evidence of deposit ownership.* In determining the amount of insurance available to each depositor, the FDIC shall presume that deposited funds are actually owned in the manner indicated on the deposit account records of the insured depository institution. If the FDIC, in its sole discretion, determines that the deposit account records of the insured depository institution are clear and unambiguous, those records shall be considered binding on the depositor, and no other records shall be considered, as to the manner in which the funds are owned. If the deposit account records are ambiguous or unclear as to the manner in which the funds are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. Notwithstanding the foregoing, if the FDIC has reason to believe that the insured depository institution's deposit account records misrepresent the actual ownership of deposited funds and such misrepresentation would increase deposit insurance coverage, the FDIC may consider all available evidence and pay claims for insured deposits on the basis of the actual rather than the misrepresented ownership.

(2) *Recognition of deposit ownership in custodial accounts.* In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis. This may be accomplished in any manner which indicates that where the funds of an owner are commingled with other funds held in a custodial capacity and a portion thereof is placed on deposit in one or more insured depository

institutions without allocation, the owner's insured interest in such a deposit in any one insured depository institution would represent, at any given time, the same fractional share as his or her share of the total commingled funds.

(b) *Recordkeeping requirements*—(1) *Disclosure of fiduciary relationships.* The deposit account records of an insured depository institution must expressly disclose, by way of specific references, the existence of any fiduciary relationship including, but not limited to, relationships involving a trustee, agent, nominee, guardian, executor or custodian, pursuant to which funds in an account are deposited and on which a claim for insurance coverage is based. No claim for insurance coverage based on a fiduciary relationship will be recognized if no fiduciary relationship is evident from the deposit account records of the insured depository institution.

(2) *Details of fiduciary relationships.* If the deposit account records of an insured depository institution disclose the existence of a relationship which might provide a basis for additional insurance, the details of the relationship and the interests of other parties in the account must be ascertainable either from the deposit account records of the insured depository institution or from records maintained, in good faith and in the regular course of business, by the depositor or by some person or entity that has undertaken to maintain such records for the depositor.

(3) *Multi-tiered fiduciary relationships.* In deposit accounts where there are multiple levels of fiduciary relationships, there are two alternative methods of satisfying paragraphs (b)(1) and (b)(2) of this section so as to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.

(i) One method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, the existence of each and every level of fiduciary relationships; and

(B) Disclose, at each level, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

(ii) An alternative method is to:

(A) Expressly indicate, on the deposit account records of the insured depository institution, that the depositor is acting in a fiduciary capacity on behalf of certain persons or entities who may, in turn, be acting in a fiduciary capacity for others;

(B) Disclose the existence of additional levels of fiduciary relationships in records, maintained in good faith and in the regular course of

business, by parties at subsequent levels; and

(C) Disclose, at each of the levels, the name(s) and interest(s) of the person(s) on whose behalf the party at that level is acting.

No person or entity in the chain of parties will be permitted to claim that they are acting in a fiduciary capacity for others unless the possible existence of such a relationship is revealed at some previous level in the chain.

(4) *Exceptions to recordkeeping requirements*—(i) *Deposits evidenced by negotiable instruments.* If any deposit obligation of an insured depository institution is evidenced by a negotiable certificate of deposit, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, negotiable traveler's check, letter of credit or other negotiable instrument, the FDIC will recognize the owner of such deposit obligation for all purposes of claim for insured deposits to the same extent as if his or her name and interest were disclosed on the records of the insured depository institution; *Provided*, That the instrument was in fact negotiated to such owner prior to the date of default of the insured depository institution. The owner must provide affirmative proof of such negotiation, in a form satisfactory to the FDIC, to substantiate his or her claim. Receipt of a negotiable instrument directly from the insured depository institution in default shall, in no event, be considered a negotiation of said instrument for purposes of this provision.

(ii) *Deposit obligations for payment of items forwarded for collection by depository institution acting as agent.* Where an insured depository institution in default has become obligated for the payment of items forwarded for collection by a depository institution acting solely as agent, the FDIC will recognize the holders of such items for all purposes of claim for insured deposits to the same extent as if their name(s) and interest(s) were disclosed as depositors on the deposit account records of the insured depository institution, when such claim for insured deposits, if otherwise payable, has been established by the execution and delivery of prescribed forms. The FDIC will recognize such depository institution forwarding such items for the holders thereof as agent for such holders for the purpose of making an assignment to the FDIC of their rights against the insured depository institution in default and for the purpose of receiving payment on their behalf.

§ 330.5 Single ownership accounts.

(a) *Individual accounts.* Funds owned by a natural person and deposited in one or more deposit accounts in his or her own name shall be added together and insured up to \$100,000 in the aggregate. If more than one natural person has the right to withdraw funds from an individual account (excluding persons who have the right to withdraw by virtue of a Power of Attorney) the account shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.7 of this part, unless the deposit account records clearly indicate, to the satisfaction of the FDIC, that the funds are owned by one individual and that other signatories on the account are merely authorized to withdraw funds on behalf of the owner.

(b) *Sole proprietorship accounts.* (1) Funds owned by a business which is a sole proprietorship and deposited in one or more deposit accounts in the name of the business, shall be treated as the individual account(s) of the person who is the sole proprietor, added to any other individual accounts of that person, and insured up to \$100,000 in the aggregate.

(2) The term "sole proprietorship" means a form of business in which one person owns all the assets of the business, in contrast to a partnership or corporation.

(c) *Single-name accounts containing community property funds.* Community property funds deposited into one or more deposit accounts in the name of one member of a husband-wife community shall be treated as the individual account(s) of the named member, added to any other individual accounts of that person, and insured up to \$100,000 in the aggregate.

(d) *Accounts of a decedent and accounts held by executors or administrators of a decedent's estate.* Funds held in the name of a decedent or in the name of the executor, administrator, or other personal representative of his or her estate and deposited into one or more deposit accounts shall be added together and insured up to \$100,000 in the aggregate. Such deposit insurance shall be separate from any insurance coverage provided for the individual deposit accounts of the executor, administrator, other personal representative or the beneficiaries of the estate.

§ 330.6 Accounts held by an agent, nominee, guardian, custodian or conservator.

(a) *Agency or nominee accounts.* Funds owned by a principal or principals and deposited into one or

more deposit accounts in the name of an agent, custodian or nominee, other than an insured depository institution, shall be insured to the same extent as if deposited in the name of the principal(s). When such funds are deposited by an insured depository institution acting in a fiduciary capacity, the insurance coverage shall be governed by the provisions of § 330.10 of this part.

(b) *Guardian, custodian or conservator accounts.* Funds held by a guardian, custodian, or conservator for the benefit of his or her ward, or for the benefit of a minor under the Uniform Gifts to Minors Act, and deposited into one or more accounts in the name of the guardian, custodian or conservator shall, for purposes of this part, be deemed to be agency or nominee accounts and shall be insured in accordance with paragraph (a) of this section.

(c) *Accounts held by fiduciaries on behalf of two or more persons.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, on behalf of two or more persons jointly, shall be treated as a joint ownership account and shall be insured in accordance with the provisions of § 330.7 of this part.

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of principal and interest, shall be added together and insured in the amount of up to \$100,000 for the interest of each owner (mortgagee, investor or security holder) in such accounts. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in the amount of up to \$100,000 for the ownership interest of each mortgagor in such accounts.

(e) *Custodial accounts for American Indians.* Paragraph (a) of this section shall not apply to any interest an individual American Indian may have in funds deposited by the Bureau of Indian Affairs of the United States Department of the Interior (the "BIA") on behalf of that person pursuant to 25 U.S.C. 162(a), or by any other disbursing agent of the United States on behalf of that person pursuant to similar authority, in an insured depository institution. The interest of each American Indian in all such accounts maintained at the same insured depository institution shall be added together and insured, up to \$100,000, separately from any other

accounts maintained by that person in the same insured depository institution.

(f) *Annuity Contract Accounts.* Funds held by an insurance company or other corporation in a deposit account for the sole purpose of funding life insurance or annuity contracts and any benefits incidental to such contracts, shall be insured in the amount of up to \$100,000 per annuitant, provided that, pursuant to a state statute:

(1) The corporation establishes a separate account for such funds; and

(2) The account cannot be charged with the liabilities arising out of any other business of the corporation; and

(3) The account cannot be invaded by other creditors of the corporation in the event that the corporation becomes insolvent and its assets are liquidated.

Such insurance coverage shall be separate from the insurance provided for any other accounts maintained in a different right and capacity by the corporation or the annuitants at the same insured depository institution.

§ 330.7 Joint ownership accounts.

(a) *Separate insurance coverage.* Qualifying joint accounts, whether owned as joint tenants with right of survivorship, as tenants in common or as tenants by the entirety, shall be insured separately from any individually owned (single ownership) deposit accounts maintained by the co-owners. Qualifying joint accounts in the names of both husband and wife which are comprised of community property funds shall be added together and insured up to \$100,000, separately from any funds deposited into accounts bearing their individual names.

(b) *Determination of insurance coverage.* All qualifying joint accounts owned by the same combination of individuals shall first be added together and insured up to \$100,000 in the aggregate. The interests of each co-owner in all qualifying joint accounts, whether owned by the same or different combinations of persons, shall then be added together and the total shall be insured up to \$100,000.

(c) *Qualifying joint accounts.* A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(1) All co-owners of the funds in the account are natural persons; and

(2) Each co-owner has personally signed a deposit account signature card; and

(3) Each co-owner possesses withdrawal rights on the same basis. The requirement of paragraph (c)(2) of this section relating to account signature cards shall not apply to certificates of

deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons, but all such deposits must, in fact, be jointly owned. The signatures of two or more persons on a deposit account signature card shall be conclusive evidence that the account is a joint account unless there is a contrary ownership capacity stated on the signature card.

(d) *Nonqualifying joint accounts.* A deposit account held in two or more names which is not a qualifying joint account, for purposes of this section, shall be treated as being owned by each named owner, as an individual, corporation, partnership, or unincorporated association, as the case may be, and the actual ownership interest of each individual or entity in such account shall be added to any other single ownership accounts of such individual or other accounts of such entity, and shall be insured in accordance with the provisions of this part governing the insurance of such accounts.

(e) *Determination of interests.* (1) The interests of the co-owners of qualifying joint accounts, held as tenants in common, shall be deemed equal, unless otherwise stated in the insured depository institution's deposit account records.

(2) The rule set forth in paragraph (e)(1) of this section shall apply regardless of whether the conjunction "and" or "or" is used in the title of a joint deposit account, even when both terms are used, such as in the case of a joint deposit account with three or more co-owners.

§ 330.8 Revocable trust accounts.

(a) *General rule.* Funds owned by an individual and deposited into any account commonly referred to as a tentative or "Totten" trust account, "payable-on-death" account, revocable trust account, or similar account evidencing an intention that upon the death of the owner, the funds shall belong to such owner's spouse, or to one or more children or grandchildren of the owner, shall be insured in the amount of up to \$100,000 in the aggregate as to each such named beneficiary, separately from any other accounts of the owner or the beneficiaries. Such intention must be manifested in the title of the account using commonly accepted terms such as, but not limited to, "in trust for," "as trustee for," "payable-on-death to," or any acronym therefor, and the beneficiaries of the account must be

specifically named in the deposit account records of the insured depository institution. The settlor of a revocable trust account shall be presumed to own the funds deposited into the account.

(b) *Interests of nonqualifying beneficiaries.* If a named beneficiary of such an account is not a spouse, child, or grandchild of one or more owners, the funds corresponding to that beneficiary, who is not within the qualifying degree of kinship, shall be treated as individually owned (single ownership) accounts of such owner(s), aggregated with any other single ownership accounts of such owners, and insured up to \$100,000 per owner.

(c) *Joint revocable trust accounts.* Where an account described in paragraph (a) of this section is established by more than one owner and held for the benefit of others, some or all of whom are within the qualifying degree of kinship, the respective interests of each owner (which shall be deemed equal unless otherwise stated in the insured depository institution's deposit account records) held for the benefit of each qualifying beneficiary shall be separately insured up to \$100,000. However, where a husband and a wife establish a revocable trust account naming themselves as the sole beneficiaries, such account shall not be insured according to the provisions of this section but shall instead be insured in accordance with the provisions of § 330.7 of this part.

(d) *Definition of "children" and "grandchildren."* For the purpose of establishing the qualifying degree of kinship set forth in paragraph (a) of this section, the term "children" includes any natural-born, adopted and step-children of the owner and the term "grandchildren" includes natural-born, adopted, or step-children of any of the owner's children.

§ 330.9 Accounts of a corporation, partnership or unincorporated association.

(a) *Corporate accounts.* (1) The deposit accounts of a corporation engaged in any independent activity shall be added together and insured up to \$100,000 in the aggregate. If a corporation has divisions or units which are not separately incorporated, the deposit accounts of those divisions or units shall be added to any other deposit accounts of the corporation. If a corporation maintains deposit accounts in a representative or fiduciary capacity, such accounts shall not be treated as the deposit accounts of the corporation but shall be treated as fiduciary accounts and insured in accordance with the provisions of § 330.6 of this part.

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.

(b) *Partnership accounts.* The deposit accounts of a partnership engaged in any independent activity shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be separate from any insurance provided for individually owned (single ownership) accounts maintained by the individual partners. A partnership shall be deemed to exist, for purposes of this paragraph, any time there is an association of two or more persons or entities formed to carry on, as co-owners, an unincorporated business for profit.

(c) *Unincorporated association accounts.* The deposit accounts of an unincorporated association engaged in any independent activity shall be added together and insured up to \$100,000 in the aggregate, separately from the accounts of the person(s) or entity(ies) comprising the unincorporated association. An unincorporated association shall be deemed to exist, for purposes of this paragraph, whenever there is an association of two or more persons formed for some religious, educational, charitable, social or other noncommercial purpose.

(d) *Definition of "independent activity."* A corporation, partnership or unincorporated association shall be deemed to be engaged in an "independent activity," for purposes of this section, if the entity is operated primarily for some purpose other than to increase deposit insurance. The deposit accounts of an entity which is not engaged in an independent activity shall be deemed to be owned by the person or persons owning the corporation or comprising the partnership or unincorporated association, and, for deposit insurance purposes, the interest of each person in such a deposit account shall be added to any other deposit accounts individually owned by that person and insured up to \$100,000 in the aggregate.

§ 330.10 Accounts held by depository institutions in fiduciary capacities.

(a) *Separate insurance coverage.* Funds held by an insured depository institution in an agency or other fiduciary capacity, whether held in its trust department, held or deposited in any other department of the fiduciary institution, or deposited by the fiduciary institution in another insured depository institution, shall be insured up to \$100,000 for each owner or beneficiary represented. This insurance shall be separate from, and in addition to, the insurance provided for any other deposits of the owners or the beneficiaries.

(b) *Determination of interests.* The insurance for funds held by an insured depository institution in a fiduciary capacity shall be determined in accordance with the following rules:

(1) *Allocated funds of a trust estate.* If trust funds of a particular trust estate are allocated by the fiduciary and deposited, the insurance with respect to such trust estate shall be determined by ascertaining the amount of its funds allocated, deposited and remaining to the credit of the claimant as fiduciary at the insured depository institution in default.

(2) *Interest of a trust estate in unallocated trust funds.* If funds of a particular trust estate are commingled with funds of other trust estates and deposited by the fiduciary institution in one or more insured depository institutions to the credit of the depositing institution as fiduciary, without allocation of specific amounts from the particular trust estate to an account in such institution(s), the deposit with respect to such estate in any insured depository institution in default will be the amount which will bear the same ratio to all unallocated funds of the trust estate for which the fiduciary is accountable as the entire unallocated trust funds to the credit of the fiduciary institution or trust company in the insured depository institution in default will bear to the entire amount of such funds so deposited by the fiduciary in all depositories (including unallocated trust funds in the fiduciary institution).

(c) *Limitation on applicability.* This section shall not apply to deposits of trust funds belonging to a trust which is classified as a corporation under § 330.9(b) of this part.

§ 330.11 Irrevocable trust accounts.

(a) *General rule.* Funds representing the non-contingent trust interest(s) of a beneficiary deposited into one or more deposit accounts established pursuant

to one or more irrevocable trust agreements created by the same settlor(s) (grantor(s)) shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be separate from the coverage provided for other accounts maintained by the settlor(s), trustee(s) or beneficiary(ies) of the irrevocable trust(s) at the same insured depository institution. Each trust interest in any irrevocable trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his or her contribution to the trust.

(b) *Treatment of contingent trust interests.* In the case of any trust in which certain trust interests do not qualify as non-contingent trust interests, the funds representing those interests shall be added together and insured up to \$100,000 in the aggregate. Such insurance coverage shall be in addition to the coverage provided for the funds representing non-contingent trust interests which are insured pursuant to paragraph (a) of this section.

(c) *Definitions of "trust interest" and "non-contingent trust interest".* For the purposes of this section:

(1) The term "trust interest" means the interest of a beneficiary in an irrevocable express trust (other than an employee benefit plan) created either by written trust instrument or by statute, but does not include any interest retained by the settlor.

(2) The term "non-contingent trust interest" means a trust interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables which may be adopted by the Internal Revenue Service.

§ 330.12 Employee benefit plan accounts.

(a) *General rule.* Funds representing the non-contingent interest of a beneficiary in an employee benefit plan, which are deposited in one or more deposit accounts, shall be aggregated with any other deposited funds representing such interests of the same beneficiary in other employee benefit plans established by the same employer or employee organization and the total shall be insured up to \$100,000. Such insurance coverage shall be separate from the coverage provided for other types of accounts maintained by the employer, employee organization, trustee, administrator, or beneficiary of such plan(s) at the same insured depository institution.

(b) *Determination of interests—(1) Defined contribution plans.* The value of an employee's non-contingent interest in a defined contribution plan shall be deemed to be the beneficiary's account balance as of the date of default of the insured depository institution, regardless of whether said amount was derived, in whole or in part, from contributions of the employee and/or the employer to the account.

(2) *Defined benefit plans.* The value of an employee's non-contingent interest in a defined benefit plan shall be deemed to be the present value of the beneficiary's interest in the plan, evaluated in accordance with the method of calculation ordinarily used under such plan, as of the date of default of the insured depository institution.

(3) *Presumption of vested interests.* For the purposes of this section, all interests of beneficiaries in an employee benefit plan shall be deemed to be fully vested as of the date of default of the insured depository institution.

(c) *Treatment of contingent interests.* In the event that employees' interests in an employee benefit plan are not capable of evaluation in accordance with the rules contained in this section, or an account established for any such plan includes amounts for future participants in the plan, payment by the FDIC with respect to all such interests shall not exceed \$100,000 in the aggregate.

(d) *Overfunded pension plan deposits.* Any portion(s) of an employee benefit plan's deposits which are not attributable to the interests of the beneficiaries under the plan shall be deemed attributable to the overfunded portion of the plan's assets and shall be aggregated and insured up to \$100,000, separately from any other deposits.

(e) *Deposits of deferred compensation plans sponsored by state or local governments, or tax-exempt organizations.* Funds representing the interests of employees under a deferred compensation plan of a state or local government, or a tax-exempt organization, which plan qualifies under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457), shall be added together and insured up to \$100,000 in the aggregate.

(f) *Definitions of "employee benefit plan," "employee organization" and "non-contingent interest".* For the purposes of this section:

(1) The term "employee benefit plan" means a pension, profit-sharing or stock bonus plan established by an employer or employee organization for the benefit of employees, including plans qualifying under sections 401(a) or 401(k) of the Internal Revenue Code of 1954 (26 U.S.C.

401(a), 401(k)), but does not include any plans qualifying under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457).

(2) The term "employee organization" means any labor union, organization, employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose, in whole or in part, of establishing such a plan.

(3) The term "non-contingent interest" means an interest capable of determination without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031-7 of the Federal Estate Tax Regulations (26 CFR 20.2031-7) or any similar present worth or life expectancy tables as may be published by the Internal Revenue Service.

§ 330.13 IRA and Keogh accounts.

(a) *Individual Retirement Accounts.* All vested interests, excluding remainder interests, of any one natural person in time and savings deposits in an insured depository institution which qualify under section 408(a) of the Internal Revenue Code of 1954 (26 U.S.C. 408(a)) shall be added together and insured up to \$100,000 in the aggregate, separately from any other accounts held by, or any other interests in such accounts owned by, the beneficiary, trustee, or custodian at the same insured depository institution.

(b) *Keogh Plan accounts.* All vested interests, excluding remainder interests, of any one natural person in time and savings deposits in an insured depository institution which qualify under section 401(d) of the Internal Revenue Code of 1954 (26 U.S.C. 401(d)) shall be added together and insured up to \$100,000 in the aggregate, separately from any other accounts held by, or any other interests in accounts owned by, the beneficiary, trustee, or custodian at the same insured depository institution.

§ 330.14 Public unit accounts.

(a) *Extent of insurance coverage—(1) Accounts of the United States.* Each official custodian of funds of the United States lawfully depositing such funds in an insured depository institution shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

(2) *Accounts of a state, county, municipality or political subdivision.* Each official custodian of funds of any state of the United States, or any county, municipality, or political subdivision thereof, lawfully depositing such funds in an insured depository institution in the state comprising the public unit or wherein the public unit is located (including any insured depository institution having a branch in said state) shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the state comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(3) *Accounts of the District of Columbia.* Each official custodian of funds of the District of Columbia lawfully depositing such funds in an insured depository institution in the District of Columbia (including an insured depository institution having a branch in the District of Columbia) shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the District of Columbia shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(4) *Accounts of the Commonwealth of Puerto Rico and other government possessions and territories.* Each official custodian of funds of the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, or of any county, municipality, or political subdivision thereof lawfully depositing such funds in an insured depository institution in Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or The Commonwealth of the Northern Mariana Islands, respectively, shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

In addition, each such official custodian depositing such funds in an insured depository institution outside of the commonwealth, possession or territory comprising the public unit or wherein the public unit is located, shall be insured in the amount of up to \$100,000 in the aggregate for all deposits, regardless of whether they are time, savings or demand deposits.

(5) *Accounts of an Indian tribe.* Each official custodian of funds of an Indian tribe (as defined in 25 U.S.C. 1452(c)), including an agency thereof having official custody of tribal funds, lawfully depositing the same in an insured depository institution shall be separately insured in the amount of:

(i) Up to \$100,000 in the aggregate for all time and savings deposits; and

(ii) Up to \$100,000 in the aggregate for all demand deposits.

(b) *Rules relating to the "official custodian"*—(1) *Qualifications for an "official custodian"*. In order to qualify as an "official custodian" for the purposes of paragraph (a) of this section, such custodian must have plenary authority, including control, over funds owned by the public unit which the custodian is appointed or elected to serve. Control of public funds includes possession, as well as the authority to establish accounts for such funds in insured depository institutions and to make deposits, withdrawals, and disbursements of such funds.

(2) *Official custodian of the funds of more than one public unit.* For the purposes of paragraph (a) of this section, if the same person is an official custodian of the funds of more than one public unit, he or she shall be separately insured with respect to the funds held by him or her for each such public unit, but shall not be separately insured by virtue of holding different offices in such public unit or, except as provided in paragraph (c) of this section, holding such funds for different purposes.

(3) *Split of authority or control over public unit funds.* If the exercise of authority or control over the funds of a public unit requires action by, or the consent of, two or more officers, employees, or agents of such public unit, then they will be treated as one "official custodian" for the purposes of this section.

(c) *Public bond issues.* Where an officer, agent or employee of a public unit has custody of certain funds which by law or under a bond indenture are required to be set aside to discharge a

debt owed to the holders of notes or bonds issued by the public unit, any deposit of such funds in an insured depository institution shall be deemed to be a deposit by a trustee of trust funds of which the noteholders or bondholders are pro rata beneficiaries, and the beneficial interest of each noteholder or bondholder in the deposit shall be separately insured up to \$100,000.

(d) *Definition of "political subdivision"*. The term "political subdivision" includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts, and bridge or port authorities and other special districts created by state statute or compacts between the states. It also includes any subdivision of a public unit mentioned in paragraphs (a)(2), (a)(3) and (a)(4) of this section or any principal department of such public unit:

(1) The creation of which subdivision or department has been expressly authorized by the law of such public unit;

(2) To which some functions of government have been delegated by such law; and

(3) Which is empowered to exercise exclusive control over funds for its exclusive use.

§ 330.15 Notice to depositors.

(a) Each insured depository institution shall reproduce and send, no later than July 29, 1990, a notice to each of its depositors/accontholders, containing language prescribed by the FDIC, describing the changes in the insurance regulations resulting from the adoption of these uniform regulations. A prototype of the notice (specifying the language for the notice) shall be provided by the FDIC to each insured depository institution. The required notice may be sent to all depositors/accontholders in a separate mailing or it may be sent as an enclosure with a monthly or quarterly statement of account.

(b) With respect to any depositor/accontholder who maintains a time deposit and would not otherwise receive a regular monthly or quarterly statement of account prior to July 29, 1990, the notice required by paragraph (a) of this section may be sent to said depositor/accontholder at any time prior to the first maturity date of that time deposit.

§ 330.16 Effective dates.

(a) *Effective date.* Except as otherwise provided in paragraphs (b), (c) and (d) and (e) of this section, the provisions of

this part shall be effective on July 29, 1990.

(b) *Time deposits.* Except as otherwise provided in paragraphs (c), (d) and (e) of this section, the provisions of this part shall be effective with respect to time deposits at their first maturity date after July 29, 1990. With respect to time deposits which mature only after a prescribed notice period, the provisions of this part shall be effective on the earliest possible maturity date after July 29, 1990 assuming (solely for the purposes of this section) that notice had been given on that date.

(c) *Notice to depositors.* Section 330.15 of this part shall be effective May 15, 1990.

(d) *Mortgage servicing accounts.* With respect to any custodial account maintained by a mortgage servicer at an insured depository institution as of July 29, 1990, the provisions of § 330.6(d) of this part shall not be applicable to such accounts until October 27, 1990. With respect to such deposit accounts, the insurance coverage provided as of April 30, 1990 shall continue until October 27, 1990.

(e) *"457 Plan" accounts.* With respect to any deposit account in a savings association which is maintained by a deferred compensation plan in existence on July 29, 1990, which qualifies under section 457 of the Internal Revenue Code, 26 U.S.C. 457 (a "457 Plan"), the provisions of § 330.12(e) of this part shall not be applicable until January 29, 1992 or, in the case of any time deposit, the first maturity date thereafter. With respect to such deposit accounts, the insurance coverage provided as of April 30, 1990 shall continue until January 29, 1992.

By order of the Board of Directors.

Dated at Washington, DC, this 30th day of April, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-11033 Filed 5-14-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-223-AD; Amendment 39-6603]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, and repair, if necessary. This amendment is prompted by reports of cracks found during routine maintenance checks. This condition, if not corrected, could lead to failure of these brackets and subsequent structural and system damage to the airplane.

EFFECTIVE DATE: June 19, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks in the outer shroud box aft hinge brackets, and repair if necessary, and eventual modification, was published in the *Federal Register* on December 7, 1989 (54 FR 50515).

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

One commenter requested that the final rule be clarified by adding, "if no crack(s) have been found during the initial inspection," to the repetitive inspection interval requirement of 1,000 landings to ensure that the repetitive inspections would be required only in instances when cracks were not found. The FAA concurs. In order to avoid confusion or any possibility of misunderstanding, the final rule has been revised to indicate that the repetitive inspections are only required if no cracks are found.

The commenter also noted the inconsistencies between the proposed rule and the service bulletin and the

French Airworthiness Directive (AD). Specifically, the commenter noted that these airplanes should be allowed to continue to fly, if only one bracket is cracked, in which case repetitive inspections would be conducted every 50 landings, as specified in the service bulletin and the French AD. The FAA does not concur. The FAA has determined that airworthiness cannot be ensured if airplanes are permitted further flight with one cracked bracket. The potential exists for the remaining brackets to sustain the load of the cracked bracket, thus placing inordinate stress on the remaining brackets, and eventually also causing them to crack.

Another commenter requested that the proposed rule be withdrawn because the compliance time of two years to replace all existing aluminum alloy brackets with steel brackets is too restrictive for a nonsafety related issue. Additionally, two commenters questioned the justification for the proposed rule, since cracks in shroud boxes do not lead to an unsafe condition. The commenters viewed replacement of brackets as an economic issue rather than a safety issue. The FAA does not concur. Bracket failure may cause vertical movement of the inboard shroud box structure in the immediate area and subsequent fouling of the inboard flap top skin. This contact would be progressively loaded during airbrake deployment. When a bracket fails, the loads may transfer to the remaining supports and they may also eventually crack. However, the FAA has reevaluated the circumstances which prompted the proposal to replace the aluminum alloy brackets with steel brackets, and has reconsidered the mandatory replacement requirement. The FAA has determined that the high degree of reliability of the inspection methods, and the frequency of the inspection intervals, as proposed, will ensure that cracks will be detected before airworthiness is compromised. Accordingly, the final rule has been revised to delete this requirement. Because of the deletion of this requirement, the final rule provides for an optional replacement of the aluminum alloy brackets with new improved steel brackets, in which case the requirement for the repetitive inspections would be terminated.

The economic analysis paragraph below has been revised to reflect only the cost for repetitive inspections. Since the proposed mandatory replacement requirement has been deleted from the final rule, related parts costs have also been deleted from the economic analysis.

"Close visual inspection", has been changed to read, "detailed visual inspection," to clarify the terminology in paragraphs A. and B. of the final rule to more accurately describe the type of visual inspection required.

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

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$10,560.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-57-142, dated December 17, 1986, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the outer shroud box aft hinge brackets, accomplish the following:

A. Prior to the accumulation of 5,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks in the outer shroud box aft hinge brackets, in accordance with Airbus Industrie Service Bulletin A300-57-142, dated December 17, 1986.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 1,000 landings.

C. If cracks are found, prior to further flight, perform a detailed visual inspection to detect cracks or damage in the remaining supports (shroud box forward hinge brackets, inner shroud box forward attachments, and the attachment brackets at the inboard end of the inner box shroud box), in the inner and outer shroud box structure in the vicinity of the failed bracket, and the top skin of the inboard flap, in accordance with the Airbus Industrie Service Bulletin A300-57-142, dated December 17, 1986.

1. If cracks or damage is found in the remaining supports, the inner and outer shroud box structure, or top skin of the inboard flap, repair prior to further flight in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

2. If any bracket is found to be cracked, damaged, or otherwise failed, replace the bracket with a serviceable part prior to further flight.

a. If the bracket is replaced with an improved steel bracket (Modification 6661H1033), in accordance with Airbus Industrie Service Bulletin A300-57-142, dated December 17, 1986, or Airbus Industrie Service Bulletin A300-57-143, Revision 2, dated July 10, 1989, the repetitive inspection of that bracket, as required by paragraph A., above, may be terminated.

b. If the bracket is replaced with other than an improved steel bracket, repeat the inspection required by paragraph A. above, prior to the accumulation of 5,000 landings on the new bracket, and thereafter at intervals not to exceed 1,000 landings.

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

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

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 19, 1990.

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-11231 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-04-AD; Amendment 39-6602]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Model III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which requires repetitive visual and X-ray inspections to detect cracks in the wing box secondary ribs, and repair and reinforcement, if necessary. This amendment is prompted by in-service experience which has identified cracks in the feet of the wing box secondary ribs, and the breakage of rivets securing the rib web angle extrusions to the longitudinal stiffeners. This condition, if not corrected, could result in structural failure of the wing box ribs.

EFFECTIVE DATE: June 19, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization

Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which requires repetitive visual and X-ray inspections to detect cracks in the wing box secondary ribs, and repair, if necessary, was published in the Federal Register on February 21, 1990 (55 FR 6008).

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

The manufacturer requested to have the compliance time of the initial inspection extended to 25,000 landings, rather than the 20,000 landings proposed in the NPRM. The FAA does not concur. Since cracks have been found on airplanes which have accumulated more than 20,000 landings, the FAA has determined that 20,000 landings is the maximum time allowable to perform the initial inspection without compromising the airworthiness of the fleet.

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

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$12,000.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale (Formerly SUD Aviation/SUD-Service): Applies to Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent structural failure of the wing box secondary ribs, accomplish the following:

A. Prior to the accumulation of 20,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform an X-ray inspection of all feet located at the top of secondary ribs 10 through 24, 27 through 29, 42, and 43, in accordance with the Aerospatiale Service Bulletin 57-68, Revision 1, dated May 20, 1988.

B. If no cracks or defects are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 3,000 landings.

C. If cracks or defects are found as a result of the inspection required by paragraph A., above, perform a visual inspection of the opened up areas, perform an X-ray inspection of ribs 7 through 43 which have not been previously inspected, repair, and reinforce damaged ribs, prior to further flight, in accordance with Aerospatiale Service Bulletin 57-68, Revision 1, dated May 20, 1988. Following repair of a rib, repeat the X-ray inspection of the adjacent secondary ribs between ribs 7 through 43, inclusive, at the following intervals:

1. If ribs 11, 15, and 20 in the same wing have been repaired and reinforced, repeat the X-ray inspection at intervals not to exceed 6,000 landings.

2. If ribs 11, 15, and 20 in the same wing have not been repaired and reinforced, repeat the X-ray inspection at intervals not to exceed 3,000 landings.

D. Repairing all the feet of all ribs in accordance with paragraph 6 of Aerospatiale Service Bulletin 57-68, Revision 1, dated May 20, 1988, constitutes terminating action for the repetitive inspections required by paragraphs B. and C., above.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 19, 1990.

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-11232 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-08-AD; Amdt. 39-6604]

Airworthiness Directives; Aerospatiale Caravelle SE 210 Model III and VIR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Caravelle SE 210 Models III and VIR series airplanes, which requires repetitive inspections to detect cracks in the main landing gear (MLG) framework brace struts, and repair or replacement, if necessary. This amendment is prompted

by reports of cracks discovered on in-service airplanes that had logged more than 25,000 landings on the MLG framework brace struts. This condition, if not corrected, could lead to failure of the brace strut and subsequent collapse of the main landing gear.

EFFECTIVE DATES: June 19, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Aerospatiale Caravelle SE 210 Model III and VIR series airplanes, which requires repetitive inspections to detect cracks in the main landing gear (MLG) framework brace struts, and repair or replacement, if necessary, was published in the *Federal Register* on March 5, 1990 (55 FR 7732), including a Correction on March 29, 1990 (55 FR 11720).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

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

It is estimated that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$600.

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

to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Aerospatiale (Formerly SUD Aviation/SUD-Service): Applies to Caravelle SE 210 Model III and VIR series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear diagonal brace struts and subsequent collapse of the main landing gear, accomplish the following:

A. Prior to the accumulation of 25,000 landings, or within 50 landings after the effective date of this AD, whichever occurs later, perform a visual and high frequency eddy current or rototest inspection of the main landing gear framework brace struts in the area of the 5 mm drain hole located 120 mm from the tapered end of Rib 38, in accordance with Aerospatiale Service Bulletin 32-122, dated November 10, 1988.

B. If no cracks are found, repeat the inspections required by paragraph A., above, at intervals not to exceed 4,500 landings.

C. If cracks found are more than 12 mm in length, prior to further flight, replace brace strut, in accordance with Aerospatiale Service Bulletin 32-122, dated November 10, 1988. Repeat the inspection required by paragraph A., above, at intervals not to exceed 4,500 landings.

D. If cracks found are 12 mm or less in length, accomplish the following in

accordance with Aerospatiale Service Bulletin 32-122, dated November 10, 1988:

1. Cracks measuring 1 mm or less

a. Ream the drain hole to 8 mm diameter in accordance with paragraph 5.C.(1) of the service bulletin.

b. Repeat the inspection required by paragraph A., above, at intervals not to exceed 3,400 flights.

2. Cracks measuring more than 1 mm but less than or equal to 7 mm

a. Drill and ream a 5 mm diameter hole at the end of the cracks in accordance with paragraph 5.C.(2) of the service bulletin.

b. Repeat inspection required by paragraph A., above, at intervals not to exceed 550 landings.

3. Cracks measuring more than 7 mm but less than or equal to 12 mm

a. Drill and ream a 5 mm diameter hole at the end of the cracks in accordance with paragraph 5.C.(2) of the service bulletin.

b. Repeat the inspection required by paragraph A., above, at intervals not to exceed 25 landings until replacement of brace strut. Upon replacement of brace strut, repeat inspections at intervals not to exceed 4,500 landings.

E. If recurring cracks are found during the repetitive inspections required by paragraph D., above, prior to further flight, replace the brace strut, in accordance with Aerospatiale Service Bulletin 32-122, dated November 10, 1988. Upon the installation of a new brace strut repeat inspections in accordance with paragraph A., above, at intervals not to exceed 4,500 landings.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 19, 1990.

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.

[FR Doc. 90-11233 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-200-AD; Amdt. 39-6601]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection and replacement, if necessary, of the Auxiliary Power Unit (APU) firewall plug assembly. This amendment is prompted by the determination that the manufacturer used a material which is not fireproof to cover an opening in the APU firewall. This condition, if not corrected, could allow a fire in the APU compartment to extend forward of the APU firewall.

EFFECTIVE DATE: June 19, 1990.

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

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Dostert, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires inspection and replacement, if necessary, of an Auxiliary Power Unit (APU) firewall plug assembly, was published in the Federal Register on January 11, 1990 (55 FR 1044).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

The Air Transport Association (ATA) of America requested that the proposed compliance time be extended from the proposed 180 days to that of a "C" check interval so that the proposed modification could be accomplished during a scheduled maintenance hold. The FAA concurs, in part, with this request. The FAA has determined that, since the required inspection and replacement may necessitate special equipment and trained personnel, the compliance time may be extended to one year from the effective date of this AD without jeopardizing safety. The final rule has been revised accordingly.

One commenter requested the FAA to revise the final rule to include reference to the inspection described in Boeing Alert Service Bulletin 747-53A2317, and to state whether replacement of the APU firewall plug would be required prior to the next flight if an inspection revealed that an incorrect plug was installed on the airplane. The FAA concurs. This inspection was not specifically called out in paragraph A. of the Notice since the FAA assumed that operators would necessarily have to conduct such an inspection to determine if an aluminum plug assembly was actually installed. In view of the fact that any information as to the type of assembly installed may not be available to the operator by other means, the FAA has determined that it is necessary to revise paragraph A. of the final rule to clarify that an inspection must initially be accomplished to make this determination and, if the inspection reveals that an aluminum plug is installed, the plug must be replaced prior to further flight. Additionally, paragraph A. has been revised to define an acceptable replacement fireproof plug assembly as one made of titanium or stainless steel.

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

There are approximately 727 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 218 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Replacement parts are estimated to be \$306 per

airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$136,468.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, listed in Boeing Alert Service Bulletin 747-53A2317 dated December 21, 1989, certificated in any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent an APU fire from penetrating the APU firewall, accomplish the following:

A. Visually inspect the APU firewall penetration located near Buttock Line Zero and Water Line 355 in accordance with Boeing Alert Service Bulletin 747-53A2317 dated December 21, 1989. If the firewall penetration is found to contain an aluminum plug assembly, prior to further flight, replace the aluminum plug assembly with a titanium

or the equivalent stainless steel plug assembly, in accordance with the service bulletin listed above.

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

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

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

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

This amendment becomes effective June 19, 1990.

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 90-11240 Filed 05-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-74]

Revision of Transition Area: Flippin, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Flippin, AR, Transition Area by making an editorial change to the existing legal description. This amendment is necessary due to the name change of the two airports within the Flippin, AR, Transition Area and a minor correction to the coordinates of each airport. The boundaries of the existing transition area are not changed.

EFFECTIVE DATE: 0901 u.t.c., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation,

Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the existing legal description of the Flippin, AR, Transition Area. This amendment is necessary due to the name change of the two airports within the transition area and minor corrections to the coordinates of each airport. The effect of this amendment is to correct the name and coordinates of the two airports within the Flippin, AR, Transition Area, from the former name of Flippin Municipal Airport to Marion County Regional Airport and from the former name of Mountain Home Municipal Airport to Baxter County Regional Airport. This action does not require a charting change and the current airspace configuration will remain the same. I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary because this action is a minor editorial amendment in which the public would not be particularly interested. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Flippin, AR [Revised]

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Marion County Regional Airport (latitude 36°17'31" N., longitude 92°35'17" W.), and within 3.5 miles each side of the Flippin VOR (latitude 36°17'59" N., longitude 92°27'30" W.) 086° radial extending from the Marion County Regional Airport 9.5-mile radius area to 8.5 miles east of the VOR; within an 8-mile radius of the Baxter County Regional Airport (latitude 36°22'10" N., longitude 92°28'11" W.), and within 3.5 miles each side of the Flippin VOR 172° radial extending from the Baxter County Regional Airport 8-mile radius area to 8.5 miles south of the VOR.

Issued in Fort Worth, TX, on April 30, 1990.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 90-11235 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-43-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-18]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several VOR federal airways located in the states of North Dakota, South Dakota, Minnesota, and Nebraska by revoking some airway segments and renumbering other segments. This action supports FAA's agreement with the International Civil Aviation Organization (ICAO) to remove all alternate airway segments from the National Airspace System (NAS).

EFFECTIVE DATE: 0901 u.t.c., June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal

Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On February 7, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-15, V-26, V-78, V-80, V-148, V-159 and V-462 (55 FR 4198). This amendment is a result of an agreement between the FAA and ICAO to remove all alternate airway segments from the NAS. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the descriptions of several VOR federal airways located in the north central portion of the United States. These airway changes are the result of an agreement between the FAA and ICAO to remove segments of alternate airway designations.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

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

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

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

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

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-15 [Amended]

By removing the words "Huron, SD, including a west alternate from Sioux Falls to Huron via Mitchell, SD, Aberdeen, SD, including a W alternate; 18 miles, 89 miles, 42 MSL, Bismarck, ND; to Minot, ND." and substituting the words "Huron, SD; Aberdeen, SD; Bismarck, ND; to Minot, ND."

V-26 [Amended]

By removing the words ", including a S alternate"

V-78 [Amended]

By removing the words ", including a S alternate"

V-80 [Revised]

From Akron, CO; North Platte, NE; O'Neill, NE; to Sioux Falls, SD.

V-148 [Amended]

By removing the words "Redwood Falls, MN, including an S alternate," and substituting the words "Redwood Falls, MN;"

V-159 [Amended]

By removing the words "Mitchell, SD," and substituting the words "Mitchell, SD; to Huron, SD."

V-462 [Revised]

From Fort Dodge, IA; to Sioux Falls, SD.

Issued in Washington, DC, on May 3, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-11239 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 135

[Docket No. 25590; Amdt. Nos. 121-213, 129-20, and 135-35]

Air Carrier Certification and Operations: Smoking Aboard Aircraft; Prohibition Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: On March 7, 1990, the FAA published a final rule to implement the congressionally mandated prohibition against smoking during most scheduled flight segments in the United States.

This action corrects an error in that final rule.

EFFECTIVE DATE: May 15, 1990.

FOR FURTHER INFORMATION CONTACT:

Larry Youngblut, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267-3755.

SUPPLEMENTARY INFORMATION: On March 7, 1990 (55 FR 8364), the FAA issued a final rule prohibiting smoking in the passenger cabin or lavatory of an airplane during most scheduled flight segments in the United States. Certain sections in parts 121 and 135 were amended and redesignated to implement the smoking prohibition. Former § 135.127(d) was inadvertently deleted. Current § 135.127(d) was never intended to be § 135.127(d). As discussed in the preamble to the current rule, current § 135.127(d) was intended to be § 135.127(e). Therefore, a correction is necessary to reinsert former paragraph (d) into the current rule. As a result of reinstating paragraph (d), current paragraphs (d) and (e) will be redesignated as paragraphs (e) and (f). The omission is corrected below. Correction to § 135.127:

PART 135—[AMENDED]

Section 135.127 is corrected by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively and adding a new paragraph (d) to read as follows:

§ 135.127 Passenger information.

* * * * *

(d) After December 31, 1988, no person may operate an aircraft with a lavatory equipped with a smoke detector unless there is in that lavatory a sign or placard which reads: "Federal law provides for a penalty of up to \$2,000 for tampering with the smoke detector installed in this lavatory."

* * * * *

Issued in Washington, DC, on May 10, 1990.

Donald P. Byrne,

Deputy Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 90-11241 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning June 1, 1990. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1990 and will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Senior Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must

value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619. Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required. (Such plans may value benefit liabilities that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1990 (55 FR 5446 (February 15, 1990)). This amendment adds to appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1990, which set reflects an increase of $\frac{1}{4}$ percent in the immediate interest rate to $7\frac{3}{4}$ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the Federal Register by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of

benefits in plans that will terminate on or after June 1, 1990, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of \$100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of Chapter XXVI, title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362 (1988).

2. Rate Set 83 of appendix B is revised and Rate Set 84 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1 , k_2 , k_3 , n_1 , and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	and before		k_1	k_2	k_3	n_1	n_2
83	3-1-90	5-31-90	7.50	1.0675	1.0550	1.0400	7	8
84	6-1-90		7.75	1.0700	1.0575	1.0400	7	8

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty
Corporation.

[FR Doc. 90-11227 Filed 5-14-90; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table

for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of June 1990.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order

12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of subchapter H of Chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) Interest Rates.

For valuation dates occurring in the month:	The values for i_k are:														
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}
June 1990....	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.06

Issued at Washington, D.C., on this 14th day of May 1990.

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90-11228 Filed 5-14-90; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA58

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the amendatory language in the final rule for safety standards for roof, face and rib support in underground coal mines that appeared in the Federal Register on April 16, 1990 (55 FR 14228).

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

SUPPLEMENTARY INFORMATION: On April 16, 1990, the Mine Safety and Health Administration published a final rule to revise a safety standard for roof, face and rib support for certain anthracite mines. This document corrects the amendatory language in that rule.

1. On page 14228, item 2 of the amendatory language should have read "The introductory text to paragraph (a) of § 75.206 is revised to read as follows."

Dated: May 8, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations
and Variances.

[FR Doc. 90-11248 Filed 5-14-90; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This notice explains and corrects OSM's decision on two provisions of a proposed amendment submitted by the State of Oklahoma as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM published its decision on the provisions in a March 27, 1990, final rule *Federal Register* notice. The provisions concerned (1) an exemption from the requirements of the State surface mining law for those operations that extract coal for commercial purposes and affect 2 acres or less, and (2) Oklahoma's proposed rule at § 845.21(b) for the use of civil penalty fees to reclaim lands affected by post-August 3, 1977 mining practices.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135. Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION: On May 18, 1988, Oklahoma submitted to OSM a proposed amendment to its approved permanent regulatory program (Administrative Record No. OK-843). The amendment consisted of proposed revisions to the Oklahoma Department of Mines' rules and regulations. On March 27, 1990, OSM approved, with certain exceptions, the amendment submitted by Oklahoma (55 FR 11169). This notice explains and corrects two provisions of OSM's decision.

1. 2-Acre Exemption

In the March 27, 1990, final rule, *Federal Register* notice, OSM stated that it was approving Oklahoma's proposed deletion of the provision to exempt from the requirements of the State surface mining law those operations that extract

coal for commercial purposes and affect 2 acres or less. (See finding No. 3 of the March 27, 1990, final rule, 55 FR 11169, 11171.) In fact, the Oklahoma program never contained a 2-acre exemption provision. Therefore, no deletion was necessary, and OSM is removing finding No. 3 from the preamble discussion in the final rule (55 FR 11169, first column on page 11171).

2. Use of Civil Penalty Fees

In the March 27, 1990, final rule *Federal Register* notice OSM did not approve Oklahoma's proposed rule at § 845.21(b), which concerned the use of civil penalty fees to reclaim lands affected by post-August 3, 1977, mining practices. (See finding No. 16 of the March 27, 1990, final rule, 55 FR 11169, 11176.) The basis for the decision not to approve this provision was that the proposed rule was less effective than the corresponding Federal regulation at 30 CFR 845.21(b). OSM found the provision less effective than the Federal regulation because Oklahoma did not include in its provision the same criteria as contained in the Federal regulation for allocating money collected from civil penalty fees. Accordingly, OSM required Oklahoma at 30 CFR 936.16(g) to submit a program amendment to ensure that, when allocating expenditures of civil penalty fees for reclamation of lands affected by post-August 3, 1977, coal mining practices, priority consideration would be given to reclamation projects that qualified as priority 1 and 2 under section 740 of the Oklahoma Coal Reclamation Act of 1979 before considering allocation of such fees for bond forfeiture sites.

Upon further review of Oklahoma's proposed rule at § 845.21(b), OSM is changing its previous finding and decision. The rationale for the revised decision is discussed below. The following finding replaces the preamble discussion for finding No. 18 in the final rule (55 FR 11169, second column on page 11176).

18. Section 845.2, Use of Civil Penalty Fees.

The Federal regulation at 30 CFR 845.21(a) authorizes the expenditure of money collected pursuant to the assessment of civil penalties under section 518 of SMCRA, for reclamation of lands adversely affected by coal mining practices after August 3, 1977. Oklahoma's proposed subsection 845.21(a) is substantively identical to the Federal regulation at 30 CFR 845.21(a) and is not inconsistent with section 518 of SMCRA.

The Federal regulations at 30 CFR 845.21(b) (1)-(4) list by priority four criteria by which the money may be allocated. They are (1) emergency projects as defined at 30 CFR 870.5, (2) reclamation projects that qualify as priority 1 under section 403 of SMCRA, (3) reclamation projects that qualify as priority 2

under section 403 of SMCRA, and (4) reclamation of bond forfeiture sites.

Oklahoma's proposed rules at subsections 845.21(b) (1) and (2) include only the first and last of the four criteria listed in the Federal regulations.

Section 518(i) of SMCRA requires that State programs incorporate civil and criminal penalties no less stringent than those of this section of SMCRA and contain the same or similar procedural requirements relating thereto. However, under section 518 of SMCRA no conditions are placed on the use of money collected by the States pursuant to the assessment of civil penalties, nor is there a requirement that State programs include rules comparable to 30 CFR 845.21 since this section concerns only Federal civil penalty collections. 30 CFR 845.21 was promulgated to provide procedures for the use of civil penalty collections by OSM pursuant to congressional authorization. The Director finds that Oklahoma's proposed rule at section 845.21(b) is not inconsistent with section 518(i) of SMCRA, and he is approving it.

The Federal regulations at 30 CFR part 936 codifying decisions concerning the Oklahoma program are being amended to implement this revised decision. The list of exceptions to the approval at 30 CFR 936.15(i), first column on page 11180, 55 FR 11169, is being revised to exclude section 845.21(b), and the required amendment at 30 CFR 936.16(g), third column on page 11180, 55 FR 11169, is being removed.

Dated: May 7, 1990.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.

PART 936—[AMENDED]

The following corrections are made in 30 CFR part 936, Oklahoma Permanent Regulatory Program, Final Rule, published in the *Federal Register* on March 27, 1990 (55 FR 11169). OSM is removing 30 CFR 936.16(g) at page 11180, third column, lines 29-43, and is amending § 936.15 by revising paragraph (i) up to the list of sections of the Oklahoma program that appear at the end of the paragraph, at page 11180, first column, lines 29-58, to read as follows:

§ 936.15 [Amended]

* * * * *

(i) With the exceptions of (1) section 700.11(a)(4) (exemption of coal extraction incidental to the extraction of other minerals); (2) section 701.5 (definitions of "affected area" and "previously mined areas"); (3) sections 780.25(a)(1) and (a)(3)(i), 784.16(a)(1)(i) and (a)(3)(i), 816.46(b)(3), 817.46(b)(3), 816.49(a)(2), 817.49(a)(2), 784.24(b), 816.151(a), and 817.151(a) (authorization of land surveyors to prepare and/or certify plans for siltation structures,

impoundments, and roads); (4) sections 816.116(a)(1), 817.116(a)(1), 816.116(c)(4), and 817.116(c)(4) (standards for revegetation success); (5) sections 784.20(g)(2) and 817.121(c)(2) (subsidence control); and (6) section 823.12(a)(1) (prime farmland restoration), the revisions to the following sections of Oklahoma's permanent regulatory program rules submitted to OSM on May 18, 1988, as revised by Oklahoma on June 8, 1988, November 14, 1988, June 22, 1989, August 8, 1989, and December 15, 1989, are approved effective March 27, 1990.

[FR Doc. 90-11194 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Relating to Identification Required to Purchase Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Section 6185(b) of Title VI of the Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, November 18, 1988, prohibits financial institutions from issuing or selling cashier's checks, traveler's checks, money orders and bank checks in amounts of \$3,000 or more in currency unless the financial institution verifies and records the identity of the purchaser as the Secretary of the Treasury shall prescribe in regulations. This is in addition to Treasury's authority in 31 U.S.C. 5313 to prescribe reports on domestic coins and currency. By this Final Rule, Treasury is requiring that financial institutions record this identifying information and maintain a chronological log or logs of the sales of these instruments.

EFFECTIVE DATE: This Final Rule is effective on August 13, 1990.

ADDRESSES: Amy G. Rudnick, Director, Office of Financial Enforcement, Department of the Treasury, Room 4320, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Scott, Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), (202) 566-9947.

SUPPLEMENTARY INFORMATION: Section 6185(b) of title VI of the Anti-Drug Abuse Act of 1988 added a new section 5325 to the Bank Secrecy Act:

Section 5325. Identification required to purchase certain monetary instruments

(a) In general.—No financial institution may issue or sell a bank check, cashier's check, traveler's check, or money order to any individual in connection with a transaction or group of such contemporaneous transactions which involves United States coins or currency (or such other monetary instruments as the Secretary may prescribe) in amounts or denominations of \$3,000 or more unless—

(1) The individual has a transaction account with such financial institution and the financial institution—

(A) Verifies that fact through a signature card or other information maintained by such institution in connection with the account of such individual; and

(B) Records the method of verification in accordance with regulations which the Secretary of the Treasury shall prescribe; or

(2) The individual furnishes the financial institution with such forms of identification as the Secretary of the Treasury may require in regulations which the Secretary shall prescribe and the financial institution verifies and records such information in accordance with regulations which such Secretary shall prescribe.

(b) Report to Secretary upon request.—Any information required to be recorded by any financial institution under paragraph (1) or (2) of subsection (a) shall be reported to the Secretary of the Treasury at the request of such Secretary.

(c) Transaction Account Defined.—For purposes of this section, the term "transaction account" has the meaning given to such term in section 19(b)(1)(C) of the Federal Reserve Act.

The legislative history indicates that Congress clearly felt that there was a need for heightened scrutiny over the sales of bank checks, cashier's checks, money orders and traveler's checks because money launderers commonly purchase these instruments for amounts under \$10,000. The House Committee Report noted that the only identification records required for persons who conduct currency transactions in amounts under \$10,000 are these needed to open an account, thus permitting nonaccount-holders to conduct currency transactions below \$10,000 without having to identify themselves. The Committee indicated that it expected affected financial institutions to be "fully cooperative and responsive to this law enforcement effort." H. Rep. No. 100-716, 100th Cong., 2d Sess. 7.

Advance Notice of Proposed Rulemaking

On December 23, 1988 (53 FR 51846), Treasury published an Advance Notice of Proposed Rulemaking to solicit comments from the public on how best to implement this provision. In the Advance Notice, Treasury suggested that the best way to implement this new

identification requirement might be by requiring a chronological log or logs of the purchase of bank checks, cashier's checks, money orders and traveler's checks. One hundred fifty six (156) comments were received from the public, primarily affected financial institutions, on how best to put this provision into effect.

Notice of Proposed Rulemaking

After review of the comments received in response to the Advance Notice, Treasury published a Notice of Proposed Rulemaking on August 22, 1989 (54 FR 34791). Treasury proposed that a new section, "Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks" be added to the Bank Secrecy Act regulations, 31 CFR part 103. The proposed section would require that all financial institutions subject to the Bank Secrecy Act regulations maintain a monthly chronological log or logs of their sales of bank checks and drafts, cashier's checks, money orders and traveler's checks to customers who purchase these instruments with currency in amounts of \$3,000-\$10,000 inclusive. The proposal also differentiated between transaction account holders and non-transaction accountholders. Under the proposal, if the purchaser had a transaction account (as that term is defined in § 103.11(p)) with the financial institution where the transaction is being conducted, only the following information would be required on the log:

- (1) The name of the purchaser;
- (2) The number of the purchaser's account;
- (3) The date of purchase;
- (4) The branch where the purchase occurred; and
- (5) The type(s), serial number(s), and the dollar amount(s) of each of the instrument(s) purchased in currency.

In addition, the proposed rule would require financial institutions to verify that the individual is a transaction accountholder, either through a signature card on file or other record at the financial institution, if the accountholder's identity was verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record. The method of verification used would be noted on the log, such as "checked computerized customer file system," or "checked signature card #124-890."

The proposal further provided that if the transaction accountholder's identity had not been verified previously, then the purchaser would have to be treated as a non-transaction accountholder for

purposes of verification of identity only. The financial institution in that case would have to verify the accountholder's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying information on the log (e.g., state of issuance and number of driver's license). Because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification. Under the proposed regulation, the financial institution then could add that identifying information to its records so that the accountholder would not be required to produce identification for subsequent purchases of these instruments.

If the purchaser is not a transaction accountholder, it was proposed that the financial institution record the following information on the log:

- (1) The name and address of the purchaser;
- (2) The social security number of the purchaser, or if the person is an alien without a social security number, the purchaser's alien identification number;
- (3) The date of birth of the purchaser;
- (4) The date of purchase;
- (5) The branch where the purchase occurred;
- (6) The type(s), serial number(s) and dollar amount of the instrument(s) being purchased;
- (7) For cashier's checks and bank checks or drafts, the payees on the instrument(s) purchased;
- (8) The amount of the purchase in currency; and
- (9) If the individual is purchasing the instrument for a third person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party if the third person is an accountholder at the institution. If the third person is not an accountholder, then the name, address and social security number, taxpayer identification number or alien identification number of the third party shall be noted on the log.

In addition, the proposal provided that for all purchasers who are not holders of transaction accounts, the financial institution must verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and record that specific identifying

information on the log (e.g., State of issuance and number of driver's license). Again, because a credit card normally does not contain a name and address of the credit card holder, a credit card alone would not be an adequate form of identification.

As proposed, contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more would be treated as one purchase. Contemporaneous was defined in the proposal to mean originating, existing or happening at the same time. In addition, Treasury proposed to use its general Bank Secrecy Act authority under 31 U.S.C. 5313 to propose that multiple purchases during the same business day by the same person be treated as one purchase if an individual employee, officer, director or partner of the financial institution has knowledge that the purchases have taken place or there is knowledge on the part of the financial institution's computer system that the purchases have occurred. Under the proposal, financial institutions would not have to purchase new hardware or software computer systems to comply with this requirement. They could, but would not be required to, change any of their computer programs or manual systems presently in place.

Under the proposed rule, a financial institution could keep a single centralized chronological log or maintain individual chronological logs by branch. A separate chronological log for each type of instrument sold or issued also would be permissible. If the financial institution maintained individual logs by branch, it was proposed that the financial institution be required to send those logs to a central location by the fifteenth day after the end of the calendar month for which the log was compiled. The logs would not need to be integrated with each other; they merely would be kept in one place. This would make it easier for both the financial institution and the Treasury Department when the Department requested information from the financial institution about its sales of these instruments.

Finally, the proposed regulation stated that the Treasury Department may request the information on the logs at any time, and that the financial institution must provide the information, whether the log is at the central location or still at the branch, even though the information would not be required to be forwarded to the centralized location until fifteen days after the close of the calendar month.

Discussion of the Comments

One hundred and four (104) comments were received in response to the Notice of Proposed Rulemaking, and they have been carefully considered in drafting this Final Rule.

Accounts Covered

The proposed rule provided that financial institutions that sell the instruments covered by the rule to holders of transaction accounts only have to record limited information on the log: name of purchaser, number of the purchaser's account, date of purchase, branch where purchase occurred, and the types, serial numbers and dollar amount of each of the instruments purchased in currency. With regard to all other sales, it was proposed that additional information must be obtained, such as the social security number and date of birth of the purchaser, payees for cashier's checks and bank checks, and information on third parties. Many of the commenters pointed out that the term "transaction account" does not include savings accounts and other time deposits, and that it seemed unfair and extremely burdensome to the financial institution to have to obtain additional information from only some of their accountholders. They requested that the Final Rule make the less extensive recording requirements for transaction accountholders applicable to all accountholders.

Treasury has considered this issue very carefully and has decided to use its authority to prescribe exemptions from requirements of the Bank Secrecy Act under 31 U.S.C. 5318(a)(5) in this matter. Under the regulations, banks will not be required to apply the nonaccountholder logging and identification procedures to purchases by customers who hold "deposit accounts" as defined in the regulations. Deposit accounts would include all transaction accounts, savings accounts and other time deposits.

Aggregation

The proposed regulation would be applicable to all contemporaneous purchases of all types of the instruments listed in the proposed regulation as required by section 5325. Contemporaneous means occurring in the same period of time. This means that currency purchases totaling between \$3,000 and \$10,000 inclusive that occur at the same time of the same type of instrument (e.g., two \$2,500 currency purchases of traveler's checks) would be included as well as purchases that occur at the same time of different types of instruments totaling between \$3,000 and

\$10,000 inclusive (e.g., a \$5,000 currency purchase of a \$2,500 cashier's check and \$2,500 in traveler's checks).

In addition, in the Notice of Proposed Rulemaking, Treasury used its authority under 31 U.S.C. 5313 to propose that the regulation also cover currency purchases of instruments totaling between \$3,000 and \$10,000 inclusive within the course of a business day if a financial institution has knowledge of the multiple purchases. The reason for proposing this additional requirement is to prevent purchasers from easily evading the identification requirements by simply purchasing bank checks and drafts, cashier's checks, money orders and traveler's checks at amounts below \$3,000 in currency during the course of a business day at the same financial institution. The proposal did not require a financial institution to purchase computer systems, or purchase additional hardware or software systems for their existing computers in order to comply with the new requirements. However, it indicated that it expected financial institutions that had systems and procedures in place that aggregate transactions to use them. If the financial institution does not have a computer or manual system in place that would capture that information, the financial institution may change its systems. In any event, financial institutions will have to rely on the knowledge of individual employees, officers, directors or partners of multiple purchases.

Many commenters requested clarification of the aggregation requirement and the knowledge element involved. Commenters wondered how far the financial institution had to go to obtain knowledge of multiple sales and whether it had to review each log each day or once a month and contact a customer for additional information. Many questioned whether they would be required to purchase new systems in order to comply with the requirement.

A financial institution does not have to institute changes to its procedures or its computer systems or purchase new systems in order to capture multiple sales; however, if the financial institution's computer system does produce information relating to multiple sales, then the financial institution may not ignore that information and must complete the log entry using whatever information the financial institution has at hand. In addition, if a teller or other employee knows that someone has made several purchases on the same business day, either because she serviced the customer, directly observed the customer coming into the financial

institution several times during one business day, or was told by the customer that he had made several purchases in one business day, then the financial institution will be deemed to have knowledge of the multiple purchases, and it must complete a log entry.

The financial institution may use information that it maintains in its records to assist in completing the log for multiple purchases. Moreover, the financial institution may contact the purchaser after the purchases have been completed in order to obtain missing required information. In addition, financial institutions are not required to review each log at the end of the day in order to obtain knowledge of multiple transactions unless it does so as part of its internal procedures or aggregation system.

Identification Concerns

Many commenters expressed concerns about the identification process. Many commenters noted that their particular institutions did not maintain signature cards or other account verification records at the teller window, and thus would prefer to identify all purchasers falling within the scope of the regulation by using the non-deposit accountholder identification procedures; i.e., by reviewing a piece of identification with a name and address that is accepted by the financial institution when cashing a check for a nondepositor. This would eliminate the need for the teller to either leave the window to verify the deposit accountholder status of the purchaser, or the need to purchase new systems or extensively revamp old ones so that the records would be available at the teller window. Many commenters also asked whether they may rely on information available in the records that they do have in order to fill out the form, so that the financial institution does not need to re-identify the purchaser who is a deposit accountholder each time a purchase falling within the scope of the regulation is made. Some commenters requested that Treasury clarify how far a financial institution has to go to verify the identity of the purchaser, i.e., may the financial institution rely on the identification presented to the teller.

Treasury agrees that there is merit to these comments, and therefore, is providing in the Final Rule that, for accountholders, a financial institution may either verify the fact that the customer has a deposit account at the financial institution or verify the identity of the accountholder. This will permit the financial institution to verify identity by viewing a piece of identification that

contains the customer's name and address rather than by having to leave the teller window to review a signature card or other account record. If, however, the financial institution does not know whether the person is a deposit accountholder, it must treat him as a non-deposit accountholder for all purposes, e.g., it must obtain the additional information such as social security number. A financial institution may obtain the limited information required of deposit accountholders only if the financial institution knows that the purchaser is a deposit accountholder.

Financial institutions should note that all purchasers falling within the new regulation, other than deposit accountholders who have had their identity previously verified and recorded, must be identified in the same manner, and that the identification requirements are similar to the requirements for identifying persons who conduct cash transactions exceeding \$10,000. See 31 CFR 103.28. Thus, previous Treasury interpretations of how identification is verified for currency transactions exceeding \$10,000 may be looked to for guidance. For example, financial institutions may rely on the identification presented to the teller, unless the financial institution has reason to believe that it is false. Moreover, if a financial institution has previously verified a customer's identity and included the identifying information in its records, it need not ask the same purchaser each time for the information.

Refusal of Transactions

Several commenters noted that the statutory authority for the proposed regulation stated that "no sales" of these instruments would take place until the required information was provided. The commenters raised the question of what a financial institution should do if the purchaser does not have "acceptable" identification and the financial institution does not have previously verified information; or does not have all the required information (for example, on third parties); or refuses to provide information. The commenters questioned whether in those instances the transaction had to be refused.

After review of the statutory language, Treasury has concluded that use of the term "no sales" means exactly that—if the relevant information cannot be provided by the purchaser at the window or by the financial institution's own previously verified records, then the transaction must be refused. If there are circumstances where a purchaser falling within the scope of the regulation is unable to provide sufficient

identification with a name and address such as a driver's license (for example, elderly persons who may have no identification other than a social security number and an insurance card) or some other identifying information such as a social security number (such as the Amish), then the Treasury Department's Office of Financial Enforcement should be contacted at the address noted above to inquire about particularized exemptions in special circumstances pursuant to 31 CFR 103.45(a). As for aggregated sales where the financial institution does not have knowledge of the aggregated sales until after the purchases have been completed, the financial institution must fill out the log entry as completely as it can from information that it has on hand and note on the log entry that it is an aggregated sale.

Third Party Transactions

Many commenters requested clarification about obtaining information on purchases on behalf of third parties and whether there was a duty to inquire each time if the purchase was taking place on behalf of a third party.

A financial institution must obtain information on third parties only when the person actually purchasing the bank check, cashier's check, money order or traveler's check does not have a deposit account at that institution. A financial institution may rely on the information provided to it by the purchaser unless the financial institution has reason to believe otherwise. As for a duty to inquire, financial institutions should follow the advice given by Treasury with respect to transactions on behalf of other persons involving currency transactions exceeding \$10,000, as outlined in BSA Administrative Ruling 89-5, issued December 21, 1989, and published in the *Federal Register* on January 11, 1990, at 55 FR 1021. It is the responsibility of the financial institution to develop internal controls and procedures to ensure the accurate completion of the logs required under the Final Rule. Generally, the only way that the financial institution will be able to obtain information on third parties involved in the transaction will be to ask the person conducting the purchase at the financial institution whether he is acting for himself or on behalf of another person.

Log Completion Issues

Many commenters raised questions about the practicalities of the log requirement, raising such issues as whether a negative report was required when no sales occurred falling within the scope of the regulation; whether a

paper log was required or whether it could be kept in a computerized form; whether any exemptions would be permitted to the logging requirement; whether a financial institution was required to review the material for completeness prior to centralization; and whether extraneous material had to be deleted prior to furnishing the log to Treasury. Several commenters also questioned the entire idea of a log, saying that there were better ways of recording the information. Some commenters also requested information on the procedures that Treasury would follow in requesting the material so that financial institutions could take that into account in deciding how to design and index their logs.

Treasury has carefully considered the commenters' concerns. A negative report is not required if there are no sales of these instruments falling within the scope of the regulation. Moreover, the log need not be retained in paper form, as long as it is accessible, in readable form, upon request by Treasury. For example, logs may be maintained in a paperless form such as on magnetic tape or diskette.

In addition, Treasury has decided that no other routine exemptions will be granted from these provisions. Treasury sees no need to establish an exemption system at this time. Should a financial institution nevertheless feel that there is a need for an exemption in a specific situation, then it should use the procedures in 31 CFR 103.45(a) to request an individual exemption.

On the question of review of logs, financial institutions should remember that to the same extent that they are responsible for ensuring that CTR's are completed fully and accurately, they also should have compliance procedures in place to assure that the logs are maintained fully and accurately.

On the question of leaving extraneous material on the log, Financial institutions subject to the Right to Financial Privacy Act may report all information required by law or regulation to the Federal government. 12 U.S.C. 3413(d). To the extent that information not required by Treasury is included on the log, it would not be required by law and should be deleted prior to submission to Treasury.

In requesting copies of the logs, Treasury anticipates that generally, it will ask for logs by date of purchase, not by the names of purchasers.

After considering various alternatives, Treasury has decided to require a log or logs, because it is the most efficient way to maintain and access the information. It would be very difficult, if in response

to a request for information, a financial institution produced many different records, instead of one, when information is requested on purchases of the instruments covered in this regulation. However, to minimize delays in selling these instruments and to prevent holding up customer lines, the required information may be noted on a copy of the instrument or other record associated with the instrument, and later transferred to a log after the purchase is concluded, at the end of the day, or, if kept at a branch, at the end of the month before the logs are sent to the centralized location. For example, many banks sell cashier's checks and require the purchaser to fill out an application prior to issuing the check. The required information could be noted on the application. After the customer leaves, the information could then be transferred to the log. Or, if it is a branch bank that maintains its own log and sends its logs to a centralized location, it could prepare the log at the end of the month prior to forwarding it to the bank's centralized location.

Financial institutions are reminded that Treasury has the right to request this information at any time. Thus, if Treasury requests information on sales of these instruments at an institution that records the information initially on another type of record and then transfers it to a log at a later date, the financial institution will have to be able to retrieve that information at any time after the purchase, even if it is not yet entered on the log.

The record retention period for these records is five years, the same retention period for all Bank Secrecy Act records. 31 CFR 103.38(d).

Centralization Issues

For those financial institutions that keep branch log or logs, the logs may be kept at the branch during the calendar month. The logs must be sent to the financial institution's centralized location within fifteen (15) days after the end of the month. Several commenters questioned the need for centralization.

After considering the issue, Treasury has decided to retain the idea of a central storage place for these logs. It not only will ensure quicker access to the logs when requested by Treasury, it also will enable the financial institutions to strengthen their internal compliance controls to make sure that all logs are readily accessible. Banks already are required to maintain a centralized list of customers granted exemptions from the CTR reporting requirements. For financial institutions that have branches all over the country, such as a telegraph

or traveler's check company or a national securities dealer, the financial institution may centralize the logs by State, as opposed to one place for the entire country. However, a list of all such locations must be made available to the Treasury Department upon request. If there are financial institutions that operate in different States which have organizational structures set up along lines other than by State (for example, a seller of money orders that divides the country up into regions rather than by State, and maintains records only by region) and their business operations would be severely disrupted by having to maintain logs by State, the financial institution may take advantage of the process contained in 31 CFR 103.45 which provides for requesting an exemption from provisions of part 103.

Miscellaneous Issues

The Notice of Proposed Rulemaking had requested comments on how much time financial institutions would need to implement the Final Rule. Estimates ranged from 90 days to six months or longer. After consideration, Treasury has decided to establish an effective date 90 days from today's date of publication in the *Federal Register*.

Treasury encourages financial institutions to report suspicious activity by persons that the financial institution believes may be taking actions to evade the reporting requirements of § 103.22 or the identification requirements of this regulation. Some examples of activity that might be considered suspicious include a reluctance on the part of the customer to produce identification, a customer taking back part of the currency to reduce the purchase to below \$3,000, or a customer coming into the same institution on consecutive or near-consecutive business days, as observed by an employee of the financial institution, and purchasing bank checks, cashier's checks, traveler's checks or money orders in amounts of less than \$3,000. See BSA Administrative Ruling 88-1, dated June 22, 1988, printed at 53 FR 40062 (October 13, 1988). Financial institutions do not want to be abused by the money launderer or the tax evader; Treasury urges financial institutions to know their customers to avoid becoming involved inadvertently in illegal activity.

Finally, Treasury is renumbering the Final Rule as § 103.29 instead of proposed § 103.28, because the geographic targeting Final Rule of August 16, 1989 (54 FR 33675) renumbered sections of part 103.

Conclusion

Treasury is adopting the rule as proposed, with the changes noted above.

Executive Order 12291

This Final Rule is not a major rule for purposes of Executive Order 12291. It is not anticipated to have an annual effect on the economy of \$100 million or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. It will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. A Regulatory Impact Analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this Final Rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h) under control number 1505-0063). The estimated average annual burden associated with the collections of information contained in this Final Rule is .33 hour per respondent and 7.5 hours per recordkeeper. Comments concerning the accuracy of the burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Enforcement at the address noted above and to the Office of Management and Budget, Paperwork Reduction Project (1505-0063), Washington, DC 20503.

Drafting Information

The principal author of this document is the Office of the Assistant General Counsel (Enforcement). However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law Enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For the reasons set forth below in the preamble, 31 CFR part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Public Law 91-508, title I, 84 Stat. 1114 (12 U.S.C. 1829b and 1951-1959); and the Currency and Foreign Transactions Reporting Act, Public Law 91-508, title II, 84 Stat. 1118, as amended (31 U.S.C. 5311-5326).

2. Section 103.11 is amended by redesignating paragraphs (g) through (t) as (h) through (u), and adding a new paragraph (g) to read as follows:

§ 103.11 Meaning of terms.

(g) *Deposit account.* For purposes of § 103.29 of this part, deposit accounts include transaction accounts described in paragraph (q) of this section, savings accounts, and other time deposits.

3. A new § 103.29 is added to subpart B after § 103.28, to read as follows:

§ 103.29 Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks.

(a) No financial institution may issue or sell a bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency unless it maintains a chronological log or logs for each calendar month on which shall be recorded the following information. The following information must be obtained for each issuance or sale of one or more of these instruments to any individual purchaser which involves currency in amounts of \$3,000-\$10,000 inclusive:

(1) *If the purchaser has a deposit account with the financial institution:*

- (i)(A) The name of the purchaser;
- (B) The number of purchaser's account;
- (C) The date of purchase;
- (D) The branch where the purchase occurred;
- (E) The type(s) of instrument(s) purchased;
- (F) The serial number(s) of each of the instrument(s) purchased; and
- (G) The dollar amount(s) of each of the instrument(s) purchased in currency.

(ii) In addition, the financial institution must verify that the individual is a deposit account holder or must verify the individual's identity. Verification may be either through a signature card or other file or record at the financial institution, if the deposit

accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or other file or record; or by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors. If the deposit accountholder's identity has not been verified previously, or if the financial institution is unable to determine whether the individual's identification had been verified previously, then the financial institution shall verify the deposit accountholder's identity by examination of a document that contains the name and address of the purchaser and normally is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (e.g., State of issuance and number of driver's license). The method of verification used shall be noted on the log.

(2) *If the purchaser does not have a deposit account with the financial institution:*

(i)(A) The name and address of the purchaser;

(B) The social security number of the purchaser, or if the purchaser is an alien and does not have a social security number, then the alien identification number;

(C) The date of birth of the purchaser;

(D) If the individual is purchasing the instrument(s) on behalf of another person, the name of the person on whose behalf the instrument is being purchased and the account number of that third party; if there is no account number, then the name, address and social security number, as well as the taxpayer identification number, or alien identification number, of such person;

(E) The date of purchase;

(F) The branch where the purchase occurred;

(G) The type(s) of instrument(s) purchased;

(H) The serial number(s) of each of the instrument(s) purchased;

(I) The dollar amount(s) of each of the instrument(s) purchased;

(J) The payee(s) on each of the instrument(s) purchased (for cashier's checks and bank checks and drafts); and

(K) The amount of the purchase in currency.

(ii) In addition, the financial institution shall verify the purchaser's name and address by examination of a document that contains the name and address of the purchaser and normally

is acceptable within the banking community as a means of identification when cashing checks for nondepositors, and shall record the specific identifying information on the log (e.g., State of issuance and number of driver's license).

(b) Contemporaneous purchases of the same or different types of instruments totaling \$3,000 or more shall be treated as one purchase. Multiple purchases during one business day totaling \$3,000 or more shall be treated as one purchase if an individual employee, director, officer, or partner of the financial institution has knowledge that these purchases have occurred. Multiple sales must be noted as such on the log.

(c) The financial institution may maintain a single centralized chronological log or it may maintain separate chronological logs by branch. A financial institution also may keep a separate chronological log for each type of instrument sold. If the financial institution maintains a separate chronological log or logs for each branch, all of the branch logs for a calendar month must be sent to a centralized location by the fifteenth (15th) day after the end of the calendar month for which the log was compiled. Financial institutions with branches in more than one State may centralize the logs by State. A list of the centralized locations and branches shall be available to the Secretary upon request.

(d) Chronological logs shall be retained by the financial institution for a period of five years.

(e) The chronological logs shall be available to the Secretary upon request at any time.

Dated: April 24, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90-11229 Filed 5-14-90; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 19

RIN 2900-AD14

Appeals Regulations and Rules of Practice; Request for Change in Representation, Request for Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rules.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments concerning the consideration of additional evidence, hearing requests, and requests for changes in representation following the certification and transfer of an appeal to the Board of Veterans Appeals (BVA). These amendments set limits on the time in which these items may be submitted and are necessary to ensure the timely processing of appeals.

EFFECTIVE DATE: These rules are effective June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jan Donsbach, Special Legal Assistant to the Chairman (O1C), Board of Veterans Appeals, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2978.

SUPPLEMENTARY INFORMATION: On July 6, 1989, VA published in the Federal Register (54 FR 28445) a notice proposing amendment of 38 CFR 19.174 to add a cutoff date following which an appellant cannot submit a request for a change in representation and an appellant and/or representative cannot submit additional evidence or a request for a personal hearing in a case which has been transferred to the BVA for appellate consideration. Provision was made for accepting evidence and requests at a later date when good cause is shown. Related revisions to 38 CFR 3.103(c), 3.156(a), and 3.160(e) were proposed to insure that effective dates for subsequent awards, if any, are preserved when evidence is submitted too late for the BVA to consider in an appeal.

VA received 12 comments on the proposed rules—two from VA employees, two from a service organization and allied legal services organizations, seven from private attorneys-at-law, and one from a County Executive.

Several commenters objected to the objective of these amendments—setting a cutoff date for submitting additional evidence and requests for a change in representation and hearings following transfer of appeals to BVA. Two voiced general opposition, but gave no reasons for their objections. Some commenters suggested that the need for the restrictions in these amendments had not been adequately addressed in view of the perceived burdens which they impose. Others expressed general concern about an abridgment of rights. One commenter asserted that the proposed regulation gave the Chairman "extraordinary power to refuse to accept any new evidence, refuse to allow a

change in the power of attorney, and refuse to allow a personal appearance hearing." One commenter asserted that extensive development was sometimes necessary in cases where appellants had not been represented at the local level, particularly in cases involving mentally ill appellants; cited possible problems in timely coordination of the efforts of local and appellate representatives when an appellant had been represented in the field; alleged that appellants were not notified when appeals were transferred to the Board; voiced concern about the inability to build a full appellate record for the consideration of the United States Court of Veterans Appeals; expressed concern about possible delays occasioned by the time necessary to rule on "good cause" motions and by the necessity to remand cases for additional development; and alleged that the proposed amendments would deprive appellants of rights accorded under chapter 71, title 38, United States Code and 38 CFR 3.103 and 19.150. One commenter felt that many appellants would not know of the restrictions. Another commenter expressed concern about appellants who may only become aware of their rights at a very late date and inquired as to the effect of the death of a representative following the cutoff date. Two other commenters expressed concern about the possible effect of the cutoff date with respect to mentally ill appellants. One commenter alleged that the changes were an attempt by the BVA to eliminate *de novo* review; that the period proposed did not allow representatives an adequate amount of time to review the record and consult with their clients, particularly in cases where transfer of the appellate record to the BVA might have been delayed; that the proposed rules were unclear about the submission of new evidence in cases where a timely request for a hearing had been entered; that the necessity to protect rights by filing a timely hearing request would result in the unnecessary scheduling of hearings; and that there would be unnecessary delays occasioned by the processing of requests to submit evidence, change representation, and conduct hearings. This commenter concluded that these amendments would serve to deny the "effective assistance of counsel."

The supplementary information provided with the notice of proposed rulemaking notes the following with respect to the need for these changes:

Under existing procedures, an appellant may continue to submit additional evidence and may submit requests for a personal hearing or for a change in his or her representative throughout the appellate

process. As a result, the appellate record can be a constant state of change while Members of the Board of Veterans Appeals are deliberating on the appeal. Confusion can sometimes result as to the exact nature of the record reviewed by the Board. Particularly with the advent of judicial review (see Pub. L. 100-687), it is essential that a point be reached at which the appellate record is fixed. In addition, considerable delay can result when it is necessary to remove an appellate record from the hands of those who are engaged in an orderly appellate review in order to respond to various tardy requests and submissions. The proposed changes would assist in orderly and prompt appeal processing and would help to clarify the nature and extent of evidence considered by the Board in reaching a decision in any given appeal.

The factors addressed in these remarks are not inconsequential. The BVA is well aware of the hardship imposed on appellants when action by the Board is delayed and is deeply concerned about the length of time which it takes to process an appeal after the case is transferred to the BVA (averaging approximately 165 days during the third quarter of fiscal year 1989). Tardy action by appellants and their representatives contributes to this extended processing time. It produces delays not only in their own individual cases, but delays in processing the appeals of the majority of appellants who are diligent in the prosecution of their appeals because of the time of Members of the Board and of the BVA's administrative staff which is wasted. Unfortunately, some appellants and, to a lesser extent, representatives indulge in not just one late request, but many. When late requests are received, the transfer of a case to Board Sections for deliberation and preparation of a decision must be delayed or appeals must be removed from the hands of members of the BVA professional staff who are assisting in the preparation of written decisions or from the hands of Members of the Board who are deliberating on the case in order to respond. In some cases, needless hours must be spent in revision of decisions which have already been prepared due to the late submission of evidence. The deliberation of Board Members must often begin anew because familiarity with the record has been lost by the time the record has been returned. Requests and added evidence may be received in the field or at the BVA so late that, by the time the request or additional evidence can be associated with the record, a BVA decision has already been promulgated. It may then be necessary to vacate the decision and begin again. (Seventy-three decisions were vacated during fiscal year 1989,

primarily due to such problems.) At the least, it may be necessary to issue a supplemental decision. In short, aside from the self-evident administrative efficiency which these changes bring about, they serve to assist the Board in providing justice to appellants with the deliberate speed to which they are entitled.

One commenter suggested that these amendments were not necessary because Board Sections do not act on appeals until late in the period of time during which cases are at the BVA. This begs the question. Often the reason that Board Sections cannot act until a case has been at the BVA for a considerable period of time is because of delays occasioned in getting the case to the Section in the first place, or removing it from the Section during earlier deliberation, because of long delayed action by an appellant or representative.

The BVA is very much aware of the importance of safeguarding the rights of appellants. Protection of appellate due process is basic and the BVA attempts to aggressively guard individual rights at every stage of the appellate process. On the other hand, it is self evident that the time must eventually come in every case when an appellant must make a final decision with respect to representation and when development of the record and appellate presentations cease so that an appellate decision may be made. Nevertheless, in view of the concerns expressed, the BVA agrees to extend the time period established by these revisions from 60 days to 90 days. This should provide more than adequate time for appellants to act after their records have been transferred to BVA.

VA does not agree that these amendments unlawfully, or improperly, impair rights provided in chapter 71, title 38, United States Code (e.g., in 38 U.S.C. 4002(b), 4004(a), 4005(a)) or otherwise provided by law.

Chapter 71 provides that the BVA will maintain a hearing docket and provide formal, recorded hearing (38 U.S.C. 4002(b)); that it will afford an opportunity for a hearing and will base its decisions on the entire record and its consideration of all of the evidence and material of record (4004(a)); and that it will accord appellants hearing and representation rights pursuant to the provisions of the chapter and regulations of the Secretary (38 U.S.C. 4005(a)). The BVA should, and must, provide hearings on appeal. This does not mean, however, that that opportunity must be extended indefinitely. It is not unreasonable to expect appellants to inform the BVA within a reasonable period of time

whether a hearing is desired. The BVA also should, and must, base its decision on all of the relevant evidence contained in the record. That does not, however, translate to a requirement that the record must remain open indefinitely. If that were the case, the BVA would never have a final record upon which to base a decision. Finally, the BVA should, and must, afford appellants the right to be represented in proceedings before it. That does not mean that it has no right to expect appellants to make a choice concerning representation within a reasonable period of time so that the disposition of the appeal may proceed.

38 CFR 3.103 and 19.150, of course, are among the "regulations of the Secretary." They are implementations and interpretations of the statutory authority referred to above. These amendments revise 3.103 to call attention to the changes these amendments bring about. The BVA has not amended 38 CFR 19.150 because these amendments do not conflict with that regulation, one of the BVA's current Rules of Practice. 38 CFR 19.150 specifies that an appellant will be accorded full right to representation in all stages of an appeal. These amendments do not curtail the right to representation, they merely provide that the appellant must make a selection of who is to represent him or her within a reasonable period of time unless there is good cause for a late selection or change in representation.

With respect to opportunities to build the record, it should be borne in mind that the BVA is an appellate body. It is not an agency of original jurisdiction. While considerable latitude is allowed in order to extend appellants every reasonable consideration, extensive delays to build records while the appellate record is at the BVA are not appropriate. This does not mean, however, that the BVA is unmindful of the necessity of a full record for appellate consideration or that special considerations concerning record development may not come into play when an appellant changes representatives, or acquires a representative for the first time, at the appellate level. (Incidentally, there should be little difference between the nature of the record developed for the BVA or for the COVA. A complete record is just as necessary for adequate BVA review as for review by a higher tribunal.)

When appellate records are deemed to be deficient for whatever cause, whether for the BVA or for higher court review, and timely development efforts by the appellant and his or her

representative have not been successful, the BVA has always been and will continue to be willing to consider reasonable requests for assistance. The Board will continue to entertain reasonable requests to remand cases back to the field, where development is almost always best carried out, for further development with the assistance of the agency of original jurisdiction. Field facilities have resources for assisting in development which the BVA does not have. The appellant is in reasonable proximity to field locations where he or she may be readily contacted for additional information and where any necessary field investigations and medical examinations can be performed. Except for needed service records which have not already been obtained, documentary evidence and witnesses are almost always located in the field. (As in the past, the BVA is more than willing to consider requests that it directly provide assistance in obtaining evidence such as service medical or administrative records.) If additional evidence is received at the appellate level, fairness to the appellant, and any other claimants/appellants affected, requires that that evidence be remanded to the agency of original jurisdiction for its consideration, further development, and, if necessary, preparation of a Supplemental Statement of the Case, except where that right has been specifically waived. The BVA is particularly sympathetic to both field and central development requests when an appellant is unrepresented or is under a mental or other handicap which prevents him or her from developing the record adequately on his or her own in a timely manner. Finally, appellants do not benefit by having their VA records tied up in Washington for extended periods of time, often delaying action on other VA benefits unrelated to their appeals, while the appellate record is developed.

The depiction of these proposed amendments as giving the Chairman extraordinary power to refuse to accept any new evidence, refuse to allow a change in the "power of attorney," and to refuse personal hearings is highly inaccurate. These proposed amendments give the Chairman no authority whatever with regard to these matters until late in the appellate process. Even at that point, his or her authority is narrowly limited to a determination of whether good cause has been shown for tardy action by an appellant or representative.

There should be no reason for an appellant to first become aware of his or her rights at a late appellate stage. VA

takes pains to advise claimants of their rights at every stage of the claims process. For example, the form (VA Form 1-4107) sent to every claimant when a claim is denied includes advisement of the right to appeal, the right to a hearing, and the right to representation. Rights are again explained in detail on the form used by appellants to appeal to the BVA (VA Form 1-9). (This advice is being expanded even further in revisions to this form which are now in progress.)

The death of an individual representative would, obviously, be good cause for a late change in representation. The provisions of 38 CFR 19.174(c) have been amended to remove whatever doubt there may have been that this is good cause for a change in representation.

VA agrees that mentally ill appellants, and other appellants suffering from a handicap which may impede the exercise of their rights, deserve special consideration. That is the reason why the revision to 38 CFR 19.174(c) was written to include "illness of the appellant or the representative which precluded action during the 60-day period" (now 90-day period) among the examples of good cause for allowing the tardy submission of evidence and requests for personal hearings and changes in representation.

These revisions have nothing to do with the standard of *de novo* review. That standard, which remains unchanged, simply means that the BVA will continue to review all of the evidence which is of record without regard to the fact that a claim has been denied in the field, provided that the appeal of that denial was timely and subject to the statutory requirement that there be allegations of specific error of fact or law in the determination being appealed.

As to the argument that these amendments do not allow representatives an adequate amount of time to review the record and consult with their clients, particularly in cases where transfer of the appellate record to the BVA might have been delayed, VA notes that in the great majority of cases appellants retain the representative at the appellate level which they had in the field. Even where this is not the case and there is a change, or initial selection, of representation at the appellate level, the approximately three-month period allowed should be more than adequate for review of the record and consultation with the client to the extent that an informed determination as to whether representation should be undertaken can be made by the

appellant and the representative. These revisions in no way impede review of the record by representatives or their ability to consult fully with their clients after representation has been established. In addition to the extension of the cut-off date to 90 days, revisions have been made to 38 CFR 19.174(c) to specifically include delay in the transfer of the appellate record to the BVA as one of the examples of good cause for late action by an appellant or representatives.

In accordance with long-standing VA procedures and as clearly required by 38 CFR 19.174(a), appellants and their representatives are notified in writing when an appeal is certified and the appellate record is transferred to BVA. VA agrees that notice should also be given concerning the limitations imposed by these revisions at that time. Appropriate changes have been made to 38 CFR 19.174(a). (The word "claimant" has also been corrected to read "appellant" in that paragraph.)

The revisions to 38 CFR 19.174(b) already very clearly provide that evidence which is submitted at a hearing which was requested on time will be considered to have been received on time.

VA does not agree that an informed decision concerning whether or not a hearing is desirable cannot be made by the late date in the appellate process provided by these revisions in almost all cases or that the few cases where "show cause" determinations are necessary will produce delays which are unnecessary. The BVA considers appeals in claims which have already been in progress for months, and sometimes for years, at the field level. The appellant, and generally the representative, have had a great deal of time to consider the approach to the case for a long time before the appeal ever reaches BVA. Appellants are informed of the availability of personal hearings very early in this process. The VA form which they are sent when they are informed of the initial action taken by the agency of original jurisdiction (VA Form 1-4107) prominently displays this information. Appellants are specifically asked whether they wish a personal hearing (and, if so, where) on the form which constitutes their substantive appeal to the BVA (VA Form 1-9) which they submit to the agency of original jurisdiction prior to the transfer of the record to the BVA. Whether a hearing is desired is normally a preliminary question which can be decided early in the appellate process. In BVA's experience, factors rarely arise late in the appellate process which

substantially influence this choice and the delay in requesting hearings is usually attributable to simple neglect. These regulations, as revised, permit the appellant and his or her representative a period of approximately three additional months within which to make this decision after notification of transfer of the appellate record to the BVA. Further, in those unusual cases where special circumstances require a late request, these amendments permit the filing of the late request when good cause is shown.

It is the late submission of hearing requests, not the submission of good-cause motions, which presents the greater risk of unnecessary delays. Except in unusual circumstances, such as severe hardship on the part of the appellant, hearings are provided at the BVA on a "first come, first served" basis. Due to the case load at the BVA, hearings must usually be scheduled weeks or months in advance. Late requests produce even later hearing dates. Further, requests which are submitted late may well not be processed and associated with the appellate record (particularly when wrongly sent to the field office, rather than to BVA, as is often the case) until after the BVA decision has already been entered in the case even though they may have been received somewhere within VA shortly before the decision was promulgated. In such cases, the decision must then be vacated and the appellate process must essentially begin again.

One commenter suggested that the amendment to 38 CFR 3.103(c) was incomplete, inasmuch as it did not include a reference to a recent revision to 38 CFR 19.159(b) pertaining to the rescheduling of hearings. (See 54 FR 11375.) Suggested language including a cross-reference to 38 CFR 19.159(b) was provided. This suggested language has not been adopted. The statement in 38 CFR 3.103(c) that a claimant is entitled to a hearing at any time means that a hearing will be afforded at any stage of the adjudication process. It does not concern hearing scheduling. Accordingly, a cross-reference to 38 CFR 19.159(b) is unnecessary.

The same commenter noted that the second closing parentheses in the body of 38 CFR 3.156(a), as amended, appeared to be misplaced. This was a typographical error and it has been corrected. This commenter suggested abbreviation of the first sentence of paragraph (b) and the last sentence of paragraph (c)(1) of 38 CFR 19.174. The alternate language suggested for paragraph (b) omitted some essential

concepts and has only been adopted in part. The suggested abbreviation for paragraph (c)(1) was inadequate and has not been adopted. Correction of erroneous cross-references in 38 CFR 3.400(q) and the possible elimination of Rule of Practice nomenclature, suggested by this commenter, are beyond the scope of these amendments.

One commenter felt that these revisions require a conforming revision of 38 CFR 3.400(r). VA agrees. 38 CFR 3.400(r) currently provides that the effective date of an award based on a reopened claim will be the "date of receipt of claim or date entitlement arose, whichever is later." 38 CFR 3.160(e) and 19.174(c)(1), as amended, provide that requests for personal hearings and additional evidence which are received by the BVA prior to the date of an appellate decision, but which are rejected by the BVA because they were submitted late without good cause, will be referred back to the agency of original jurisdiction which may treat the testimony presented at a new hearing or other new evidence as the basis of a reopened claim. Paragraph 19.174(c)(1) also provides that, if the new evidence or new hearing then results in an allowance of benefits, the effective date will be the same as if the BVA had granted the appeal which was pending at the time that the hearing request or additional evidence was received. These amended provisions may thus be in conflict with the existing provisions of 38 CFR 3.400(r) in some cases. 38 CFR 3.400(r) has been revised to incorporate the exception in 38 CFR 19.174(c)(1). (VA recognizes that some conforming revisions to 38 CFR part 21 will also be required. These changes will be proposed at a later date.)

The same commenter asserted that these amendments, if adopted, will deprive appellants of the same "due-process" rights which they have at the "office of original jurisdiction" and that they would place an additional burden on such offices. It is true that these amendments do create some differences between procedures at field offices and before the BVA, but there are many such differences—as could be expected. The functions of field offices and of the BVA are not the same. Field offices are agencies of original jurisdiction, whereas the BVA is an appellate body. As previously noted, the time must eventually come in every case when an appellant must make a final decision with respect to representation and when development of the record and appellate presentations cease so that an appellate decision may be made. Some additional burden is imposed on VA field offices

by these amendments, but it is not substantial. Essentially, it involves only their consideration of additional evidence and hearing testimony submitted too late for the BVA to consider. They must reconsider their position in the light of evidence initially submitted while a case is at the BVA anyway, unless this right is waived by the appellant. (See current § 19.174.)

One commenter suggested that, instead of requiring that good cause be shown for the late submission of evidence or requests for changes in representation or hearings, the rule be rewritten to provide for a motion for an extension of time to take these steps. This suggestion was not adopted. There would be little or no practical difference in the approach suggested. This commenter also suggested that the cutoff date be measured from the date that the appellate record was received by BVA, rather than from the time that the appellant is given notice of the transfer of the appellate record to BVA. This suggestion was not adopted either. The method adopted enables appellants and their representatives to easily determine the exact cutoff date, inasmuch as they are always informed of the transfer of the appellate record to BVA. The proposed method does not. This commenter voiced concern about perceived problems in associating requests with the record, when the requests are submitted soon after notice of transfer of the record to the BVA has been given, because the request might be received at the BVA while the file was still in transit. In BVA's experience, proper association of these early requests with the appropriate file is rarely a problem.

Concerning this commenter's suggestion that these amendments will serve to encourage representatives to file protective requests for hearings and that this would add to BVA's workload due to the scheduling of hearings which do not materialize, the BVA does not believe that this will be a significant problem. As noted previously, a great deal of time is provided to make the choice of whether or not to request a hearing and the occurrence of events very late in the appellate process which make a hearing desirable for the first time is rare. In those unusual cases, these amendments provide a mechanism for obtaining a hearing. Thus, it will generally be unnecessary for appellants and their representatives to file protective hearing requests. Based on past experience, the BVA has every reason to believe that the vast majority of representatives will act responsibly

and will not file frivolous hearing requests.

This commenter also expressed lengthy views about perceived limitations on the ability of representatives to withdraw from a case imposed by these revisions. These revisions focus on when an appellant may change representatives, not when a representative may withdraw. The language in 38 CFR 19.174 has been altered to make this clearer. In addition, withdrawal of a representative has been added to the list of examples of good cause for a late change in representation. The same commenter raised questions about restrictions on hearings in which the appellant is not present. That issue, while related, is not the subject of this rule. That issue will be clarified in the future in addressing comments concerning other proposed rules. (See 54 FR 34334)

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. They will have no significant direct impact on small entities (i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions) inasmuch as they concern the appeals of individual appellants before BVA.

VA has also determined that these regulatory amendments are nonmajor in accordance with Executive Order 12291. They will not have an adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies, or geographic regions.

There is no Catalog of Federal Domestic Assistance program number involved with these regulatory amendments.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans

Approved: April 17, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR parts 3 and 19 are amended as follows:

PART 3—[AMENDED]

1. In § 3.103, the first sentence of paragraph (c) is revised and an authority citation is added to read as follows:

§ 3.103 Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

(c) *Hearings.* Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of this part, subject to the limitations described in § 19.174 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. * * *

(Authority: 38 U.S.C. 210(c))

2. In § 3.156, paragraph (a) is revised and an authority citation is added to read as follows:

§ 3.156 New and material evidence.

(a) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision if a timely appeal has been filed (including evidence received prior to an appellate decision and referred to the agency of original jurisdiction by the Board of Veterans Appeals without consideration in that decision in accordance with the provisions of § 19.174(c)(1) of this chapter), will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(Authority: 38 U.S.C. 210(c))

3. In § 3.160, paragraph (e) is revised and an authority citation is added to read as follows:

§ 3.160 Status of claims.

(e) *Reopened claim.* Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration

as provided in § 19.174(c)(1) of this chapter.

(Authority: 38 U.S.C. 210(c))

4. In § 3.400, paragraph (r) is revised and an authority citation is added to read as follows:

§ 3.400 Status of claims.

(r) *Reopened claims.* (§§ 3.109, 3.156, 3.157, 3.160(e)) Date of receipt of claim or date entitlement arose, whichever is later, except as provided in § 19.174(c)(1) of this chapter.

(Authority: 38 U.S.C. 210(c))

PART 19—[AMENDED]

Section 19.174 is revised to read as follows:

§ 19.174 Rule 74. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans Appeals.

(a) *Notification.* When an appeal is certified to the Board of Veterans Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in this section.

(b) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing to them of the notice described in paragraph (a), or until the date the appellate decision is promulgated by the Board of Veterans Appeals, whichever comes first, during which they may submit a request for a personal hearing or additional evidence, and during which the appellant may request a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. The date of the letter of notification will be presumed to be the date of mailing for purposes of determining whether the request was timely made or the evidence timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period,

even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(c) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* Following the expiration of the period described in paragraph (b) of this section, the Board of Veterans Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor or guardian); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions should be filed at the following address: Office of the Chairman, Special Legal Assistant (O1C), Board of Veterans Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that

agency as the basis for a reopened claim if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (d) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (e) of this section.

(d) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any referred to the Board by the originating agency under Rule 73(b) (§ 19.173(b) of this part), must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(e) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of the letter of notification of the new evidence will be presumed to be the date of mailing for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 4004, 4005, 4005A)

Cross-References: For further information concerning: Hearings, see § 3.103 and Rules 57 through 71 (§§ 19.157-19.171); New and Material Evidence, see § 3.156(a); Reopened Claim, see §§ 3.160(e) and 3.400(r); Computation of Time Limit, see Rule 31 (§ 19.131); Legal Holidays, see Rule 32 (§ 19.132).

[FR Doc. 90-11128 Filed 5-14-90; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 17

RIN 2900-AD41

Expanded Eligibility for 30-40 Percent Service-Connected Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations (38 CFR part 17) to re-define the eligibility requirements under which outpatient/ambulatory health care is provided. These amendments will incorporate the provisions of recently enacted legislation.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT:

Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2504.

SUPPLEMENTARY INFORMATION: Under VA regulations for determining eligibility for outpatient care (38 United States Code 17.60), VA shall furnish outpatient/ambulatory care to the following specified groups of eligible veterans: (1) Veterans who require care for their service-connected disabilities; (2) Veterans who are 50 percent or more service-connected and require care for any condition; and (3) Veterans who have a disability for which they receive compensation under 38 United States Code 351. Pre-bed care, post-hospital care, and care to obviate the need for hospitalization, for any condition, shall be furnished to the following groups of veterans: (1) Veterans who are rated 30 or 40 percent service-connected; (2) Category "A" veterans whose annual income does not exceed the pension rate of a veteran in need of Regular Aid and Attendance.

Outpatient medical services for any condition may be furnished on an outpatient or ambulatory basis to the following groups of veterans: (1) Veterans who are former prisoners of war; (2) Veterans who served during the Mexican Border Period or World War I;

(3) Veterans in receipt of increased pension, additional compensation or allowance based on the need of Regular Aid and Attendance or by being permanently housebound (or who, but for the receipt of retired pay, would be in receipt of such pension, compensation or allowance). Pre-bed care, care to obviate the need for hospitalization and post hospital care may be furnished to the following groups of veterans: (1) Category "A" veterans whose income exceeds the pension rate of a veteran in need of Regular Aid and Attendance but below that of a Category "A" veteran; (2) Category "B" veterans; (3) Category "C" veterans (with co-payment) and (4) Veterans exposed to toxic substance or radiation.

VA finds, for good cause, advance publication for notice and public comment is not required. The regulatory amendment merely updates VA regulations consistent with the recent change in law and does not involve any substantive change in VA policy or regulations. Thus, in accordance with the provisions of 38 CFR 1.12, advance publication in the *Federal Register* is unnecessary. Accordingly, the change in the regulations is now published as final.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. These regulatory amendments will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary hereby certifies that these regulations will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601-612. Pursuant to 5 United States Code 605(b), these regulations are therefore exempt from the regulatory analysis requirements of 5 United States Code 603 and 604. The reason for this certification is that the regulations only apply to veterans receiving outpatient medical care within the VA system and impose no regulatory burden on small entities.

(The Catalog of Federal Domestic Assistance Numbers are 64.009 and 64.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs, health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health

programs, Nursing home care, Philippines, Veterans.

Approved: April 18, 1990.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 17, Medical, is amended as follows:

PART 17—[AMENDED]

Section 17.60 is being revised in its entirety to read as follows:

§ 17.60 Eligibility for outpatient services.

(a) VA shall furnish on an ambulatory or outpatient basis medical services as are needed, to the following applicants under the conditions stated, except that applications for dental treatment must also meet the provisions of § 17.123.

(Authority: 38 U.S.C. 612)

(1) *For service-connected disability.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran for a service-connected disability (including a disability that was incurred or aggravated in the line of duty and for which the veteran was discharged or released from the active, military, naval, or air service).

(2) *For veterans 50 percent or more disabled from a service-connected disability.* Medical services on an ambulatory or outpatient basis shall be provided for any disability of a veteran who has a service-connected disability rated at 50 percent or more.

(3) *For veterans in receipt of compensation under section 351 of title 38 U.S.C.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran for a disability for which the veteran is in receipt of compensation under section 351 of title 38 U.S.C. or for which the veteran would be entitled to compensation under that section (but in the case of such a suspension, such medical services may be furnished only to the extent that such person's continuing eligibility for medical services is provided for in the judgment or settlement).

(4) *For compensation and pension examinations.* A compensation and pension examination shall be performed for any veteran who is directed to have such an examination by VA.

(Authority: 38 U.S.C. 111 and 210)

(5) *For adjunct treatment.* Medical services on an ambulatory or outpatient basis shall be provided to veterans for an adjunct nonservice-connected condition associated with and held to be aggravating a disability from a disease or injury adjudicated as being service-connected.

(b) VA shall furnish on an ambulatory or outpatient basis medical services as necessary to the following applicants in preparation for hospital admission; to obviate the need of a hospital admission; or such medical services necessary to complete an episode of treatment incident to hospital, nursing home, or domiciliary care, under the conditions stated below except that applicants for dental treatment must also meet the applicable provisions of § 17.123.

(1) *For veterans with a service-connected rating of 30 to 40 percent.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran who has service-connected disability rated at 30 or 40 percent.

(2) *For veterans whose annual income does not exceed the maximum annual rate of pension with aid and attendance.* Medical services on an ambulatory or outpatient basis shall be provided to any veteran who is eligible for hospital care and whose annual income does not exceed the maximum annual rate of pension that would be applicable to the veteran if the veteran were eligible for pension.

(Authority: 38 U.S.C. 503, 521(d), and 610(a))

(c) The term "shall furnish" in paragraphs (a) and (b) means that, if the veteran is in immediate need of outpatient medical services, VA shall furnish care at the VA facility where the veteran applies. If the needed medical services are not available there, VA shall arrange for care at the nearest VA medical facility or Department of Defense facility (with which VA has a sharing agreement) that can provide the needed care. If VA and Department of Defense facilities are not available, VA shall arrange for care on a fee basis, but only if the veteran is eligible to receive medical services in non-VA facilities under § 17.50b.

If the veteran is not in immediate need of outpatient medical services, VA shall schedule the veteran for care where the veteran applied, if the schedule there permits, or refer the veteran for scheduling to the nearest VA medical center or Department of Defense facility (with which VA has a sharing agreement).

(d) VA may furnish on an ambulatory or outpatient basis medical services as needed to the following applicants, except that applications for dental treatment must also meet the provisions of § 17.123.

(1) *For former prisoners of war.* Medical services on an ambulatory or outpatient basis may be provided to any veteran who is a former prisoner of war.

(2) *World War I and Mexican border period.* Medical services on an ambulatory or outpatient basis may be provided to any veteran of World War I or the Mexican border period.

(3) *For veterans who are housebound or in need of aid and attendance.* Medical services on an ambulatory or outpatient basis may be provided to any veteran who is in receipt of increased pension or additional compensation or allowances based on the need of regular aid and attendance or by reason of being permanently housebound (or who, but for receipt of retired pay, would be in receipt of such pension, compensation or allowance).

(4) *For Commonwealth Army Veterans and New Philippine Scouts.* Medical services on an ambulatory or outpatient basis may be furnished to Commonwealth Army veterans and New Philippine Scouts within the limits of facilities in the United States over which the VA has direct jurisdiction or other Federal facilities with which the Secretary contracts, for the treatment of service-connected disabilities.

(Authority: 38 U.S.C. 634)

(5) *For veterans participating in a rehabilitation program under 38 U.S.C. chapter 31.* Medical services on an ambulatory or outpatient basis may be provided as determined medically necessary for a veteran participating in a rehabilitation program under 38 U.S.C. chapter 31 as defined in § 17.48(j).

(e) VA may furnish on an ambulatory or outpatient basis medical services necessary in preparation for hospital admission to the following applicants; to obviate the need of a hospital admission; or such medical services necessary to complete an episode of treatment incident to hospital, nursing home, or domiciliary care, under the conditions stated below except that applications for dental treatment must also meet the applicable provisions of § 17.123. Medical services to complete an episode of hospital, nursing home, or domiciliary care may not be provided for a period in excess of 12 months after discharge from such care, except where a staff physician determines that a longer period is required by virtue of the disability being treated.

(1) *For any veteran who has a service-connected disability rating of less than 30 percent.* Medical services on an ambulatory or outpatient basis may be provided to veterans who have a service-connected disability rating of less than 30 percent; including zero percent service-connected veterans.

(2) *For veterans exposed to toxic substances in Vietnam.* Medical services on an ambulatory or outpatient

basis may be provided to veterans who served during the Vietnam Era in the Republic of Vietnam and who claim their need for treatment is as a result of exposure to toxic substances while in Vietnam.

(3) *For veterans exposed to ionizing radiation.* Medical services on an ambulatory or outpatient basis may be provided to veterans who claim their need for treatment is as a result of exposure to ionizing radiation following the detonation of a nuclear device during such service or who were exposed to ionizing radiation following the detonation of such devices in Japan during World War II.

(4) *Category "A" veterans whose income exceeds the maximum rate of pension.* Medical services on an ambulatory or outpatient basis may be provided to veterans who were not otherwise eligible and whose income exceeds the pension rate of a veteran in need of regular aid and attendance but is below that of a Category "A" veteran based upon completion of the "Means Test". Section 622 of title 38 U.S.C. lists the criteria for the determination of inability to defray necessary expenses; income thresholds (Means Test).

(5) *Category "B" veterans.* Medical services on an ambulatory or outpatient basis may be provided to veterans who are determined to be Category "B" based upon completion of the "Means Test".

(6) *Category "C" veterans.* Medical services on an ambulatory or outpatient basis may be provided to veterans who are determined to be Category "C" based upon completion of the "Means Test" and who agree to make the co-payment.

(7) *Veterans eligible for hospital care under 38 U.S.C. 610.* Ambulatory or outpatient medical services may be provided to any veteran eligible for hospital care under 38 U.S.C. 610 not otherwise specified above.

(f) *Home health services.* Home health services determined by VA to be necessary for effective and economical treatment of a disability may be furnished to any veteran to include home improvement and structural alterations as are necessary to assure continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. The cost to VA or reimbursement by VA to the veteran will not exceed \$2,500 for home improvements or structural alterations for veterans being treated under § 17.60(a) (1)-(3) and will not exceed \$600 for any other veteran being treated under this section.

(Authority: 38 U.S.C. 617)

[FR Doc. 90-11129 Filed 5-14-90; 8:45 am]

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ACTION

45 CFR Part 1215

Freedom of Information Act Regulations

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: The provisions contained herein establish regulations for this Agency with regard to the dissemination of records, documents and other information in conformity with the Public Information Act, 5 USC as amended by Public Law 93-502, 88 Stat. 1561.

EFFECTIVE DATE: June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Edward F. Carey, FOIA Officer, ACTION, room 3202, 1100 Vermont Ave., NW., Washington, DC 20525, (202) 634-9242.

SUPPLEMENTARY INFORMATION: On January 20, 1988, (53 FR 1496), a notice of proposed rule making was published in the Federal Register (88 1038) proposing to add a new part 1215 to part 45 of the Code of Federal Regulations to provide rules and regulations for the production, inspection and copying of records and documents. Notice was given that inquiries, comments or views concerning the proposed subpart were to be submitted to ACTION on or before February 19, 1988. The following comments have been received to this date:

A. A comment on § 1215.2(i). Definitions, suggested that no definition for "Representative of the News Media" be provided since the term can be deemed to be self-explanatory or that the Agency modify its definition so that it would not be in the position of making "editorial determinations" of what is considered news. The Agency has adopted a definition identical to the definition adopted by the National Foundation on the Arts and Humanities and nearly identical to that adopted by the Consumer Product Safety Commission, i.e.,

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be current interest to the public.

As suggested by the comment referenced above, this definition is acceptable since it considers the

organization rather than the specific information the requester seeks in applying the definition of "news". The Agency does, however, maintain examples of "news media entities" with the qualification that "These examples are not intended to be all inclusive."

B. A comment on § 1215.7(k), Schedule of Fees, objected to the use of the Justice Department's guidance on the promulgation of fee and waiver guidelines on the basis that:

(a) Congress named the Office of Management and Budget, not Justice to promulgate these guidelines, and

(b) The guidance restricts the granting of waivers beyond what Congress intended and raises additional questions.

The Agency has incorporated the Department of Justice's guidance. The Agency has an obligation to inform the public as to the criteria that will be used to determine the public interest. The Agency believes that the criteria developed by the Justice Department provides a fair method of determination which can easily be applied by requesters and the Agency.

The 1986 FOIA amendments changed the law on fee waivers—requiring that fees must be waived or reduced if disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." In effect, the Justice Department's guidance facilitates the determination of waivers without delaying the timely response of FOIA requests. The Agency has also added as appendix A to subpart 1215, a sample request letter containing optional language asking for a fee waiver. In response to a specific comment on the public's interest in monitoring the activities of its government, this sample request letter helps to ensure recognition of the public's interest as a criterion for granting a public interest fee waiver.

Finally, the Agency's fee schedules ensure benefits guaranteed by the FOIA Reform Act of 1986. For example, the Agency excludes charges for reproduction of the first 100 pages in response to requests from representatives of the news media and educational or noncommercial scientific institutions when these requesters are not seeking records for commercial use.

C. A comment on § 1215.7(k)(1), Schedule of Fees, suggests that the Agency's proposed regulations violate the Paperwork Reduction Act. According to the comment, the Paperwork Reduction Act requires that federal agencies "shall not conduct or

sponsor the collection of information" without first obtaining the approval of the director of the Office of Management and Budget (5 CFR part 3507(a)). Under OMB regulations, the comment adds, an agency sponsors a collection of information if it "requires a person to provide information to another person" (5 CFR 1320.7(t)).

This comment's narrow interpretation of the meaning of the term collection of information relies on a federal agency being considered the sponsor for the "collection of information from one person to another," as referenced in (5 CFR 1320.7(t)). However, OMB regulations are clear and explicit in defining the "collection of information" as meaning "the obtaining or soliciting of information from ten or more persons by means of identical questions, whether such collection of information is mandatory, voluntary, or required to obtain a benefit" (5 CFR 1320.7(c)). The Agency's regulations, therefore, are not in violation of the Paperwork Reduction Act since they do not impose any obligatory information requirements on the public.

D. A comment on § 1215.7(k)(2)(v), Schedule of Fees, states that the Agency's proposals do not consider the legitimacy of the public's interest in monitoring its activities as a criterion for granting a public interest fee waiver.

As indicated earlier, the sample request letter added to ACTION's regulations helps to ensure recognition of the public's interest in monitoring the Agency's activities as a criterion for granting a public interest fee waiver.

Additionally, the adoption of the Justice Department's guidance provides assistance to submitters to help them include in their FOIA requests adequate and identifiable information that is in the public interest to obtain. For example, when a news media requester has satisfied the "public interest" standard necessary for a waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester, and a waiver or reduction of fees will be granted. Generally, a representative of the news media, a scholar, or a public interest group is more likely to qualify for a waiver or a reduction of fees. A commercial user may find it difficult to qualify for a waiver.

E. A comment on § 1215.7(k)(2)(v), Schedule of Fees, suggests that notably absent from the fee waiver tests in the Agency's proposals is a statement excepting the news dissemination function from a test to determine the requester's commercial interest, a test

that could eliminate entitlement to a fee waiver.

In response to this comment, the Agency has added the following section on waivers, specifically § 1215.7(l)(2)(v):

In those instances where a news media requester, scholar, or public interest group has satisfied the "public interest" standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to the requester and a waiver or reduction of fees will be granted.

This additional statement also complements the Justice Department's guidance on the determination of fees and waiver.

F. A comment on part 1215.7(k)(3), Schedule of Fees, suggests that the Agency's proposal not to begin processing a FOIA request until a decision has been reached on granting or denying a fee waiver is considered obstructive and conducive to routine and unnecessary delay. This comment did state, however, that any Agency requirement to decide fee waivers and delay a decision to grant or deny information should be limited to those requests where cost might reasonably be in issue.

In response to this comment, the Agency has explicitly added a stipulation on costs to ensure that no delays will occur whenever costs are not in issue in responding promptly to FOIA requests. (In practice, the Agency has generally assumed that a determination on waivers is primarily decided by the costs involved.)

Accordingly, § 1215.7(k)(3) has been modified to begin:

When a fee waiver application involving costs reasonably in issue (as in the case of voluminous requests for information) has been included in a request for records, * * *

G. A comment on part 1215.7(g), Schedule of Fees, considers the proposal to require advance payment as interference with the Agency's prompt provision of information and with the media's timely dissemination of information. According to this comment, "news media requesters would need to await the assessment and mailing of a bill, return payment and still other bureaucratic processes for recording payment and certifying release."

The Agency's requirement for advance payment is considered reasonable because of the limited circumstances and frequency when advance payments would be assessed, i.e., only (1) when such fees are likely to exceed \$250 and the requester has no history of payment of FOIA fees and (2) a requester has previously failed to pay a FOIA fee charged in a timely fashion.

This requirement will not affect many requesters. In those limited circumstances where requests may involve substantial amounts of search time or extensive copying, the advance payment provision is not, in the Agency's opinion, unreasonable.

The Agency has, however, modified this specific requirement to emphasize these limited circumstances. Section 1215.7(g) now reads:

Advance payment of assessable fees are not required from a requester unless: (1) The Agency estimates * * *

H. A comment on § 1215.5(e), Record Request and Response Procedures, suggests that ACTION's proposal to write the requester for further clarification of insufficiently identified records is "archaic in the telephone age."

In response to this comment, the Agency has modified this section to state that:

On making a determination that the description contained in the request does not sufficiently describe a requested record, the FOIA Officer shall promptly so advise the requester in writing and by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record.

Telephoning requesters to help clarify insufficiently identified records has been standard practice by the Agency. However, written communications are required to formally document FOIA requests and the Agency's responses. Written communications also help clarify and identify the requests and the responses, thus benefiting both the requester and the Agency.

As a matter of formal practice, the Agency also documents its understanding of revisions to a FOIA request in its written communications with the requester.

I. A comment on § 1215.8, Business Information, acknowledges the requirement of Executive Order 12600 to notify business submitters of information when release of the information is in issue. However, the comment suggests that this requirement cannot override the requirement of the Freedom of Information Act that requesters be granted or denied information within 10 working days.

In response to this comment, the Agency has modified § 1215.8(c) as follows:

Through the notice required in paragraph (b) of this section, the Agency shall, after determining (1) that a submitter had in good faith previously designated the information as confidential commercial information or (2)

that disclosure of the information could reasonably be expected to cause substantial competitive harm to the submitter, and to the extent permitted by law to grant or deny information to requesters of information within 10 working days, afford a business submitter a reasonable opportunity to object to disclosure of the information in question and to provide the Agency with a written statement of grounds for such objection.

J. A comment on § 1215.6(b)(3), Time Limits and Extensions, suggests that the Agency inappropriately adds to the statutory provisions allowing extension of time from 10 to 20 days in unusual circumstances. According to this comment, Congress did not contemplate consultation with business submitters in limiting the specific circumstances in which an agency can extend its response time, and therefore, the Agency may not add to those exceptions.

The Agency considers reasonable the statutory provisions which allow extension of time from 10 to 20 days in circumstances where time is necessary for consultation with a submitter of business information having an interest in the request.

Given (a) the time necessary to consult the submitter of business information having an interest in the request and (b) the Agency's policy not to release information which is a trade secret or commercial or financial information which is privileged or confidential within the meaning of section 5 U.S.C. 552(b)(4) of the Freedom of Information Act, the Agency considers these statutory provisions reasonable.

K. Various minor changes have been made, such as: the FOIA Officer has been designated to administer the distribution of copies of records to any person entitled to them; an appendix has been added, namely, a Sample FOIA Request Letter and a Sample FOIA Appeal Letter; and the new ACTION address of 1100 Vermont Avenue, NW., Washington, DC 20525 has been included.

43 CFR part 1215 is revised to read as follows:

PART 1215—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT

Sec.	
1215.1	Purpose.
1215.2	Definitions.
1215.3	Availability of records.
1215.4	Location of records.
1215.5	Record request and response procedures.
1215.6	Time limits and extensions.
1215.7	Schedule of fees.
1215.8	Business information.

Sec.

1215.9 Appeal procedures.

Appendix 1(A) to Part 1215—Freedom of Information Act Request Letter (Sample)**Appendix 1(B) to Part 1215—Freedom of Information Act Appeal Letter (Sample)**

Authority: Pub. L. 93-113, 87 Stat. 411 (42 U.S.C. 4951, *et seq.*); and 5 U.S.C. 552.

§ 1215.1 Purpose.

The purpose of this part is to prescribe rules for the inspection and copying of opinions, policy statements, manuals, instructions, and other records of ACTION pursuant to the Freedom of Information Act (5 U.S.C. 552). Information customarily furnished to the public in the regular course of ACTION's official business may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974 (5 U.S.C. 552a). Rules for the disclosure by ACTION of records protected by the Privacy Act are set forth at 45 CFR part 1224.

§ 1215.2 Definitions.

As used in the part, the following definitions shall apply:

(a) *The Act* means the Freedom of Information Act (5 U.S.C. 552).

(b) *The Agency* means ACTION.

(c) *Records* include all books, papers, maps, photographs or other documentary material, or copies thereof, regardless of physical form or characteristics, made or received by ACTION and preserved as evidence of its organization, functions, policies, decisions, procedures, operations or other activities; but do not include books, magazines, or other materials not produced by ACTION and acquired solely for reference purposes.

(d) *Search* means time spent locating records responsive to a request, including page-by-page or line-by-line identification of responsive material within a record.

(e) *Review* means the process of examining records located in response to a request to determine whether any record or portion of a record is permitted to be withheld. It also includes processing records for disclosure (*i.e.*, excising portions not subject to disclosure under the Act and otherwise preparing them for release). Review does not include time spent resolving legal or policy issues regarding the application of exemptions under the Act.

(f) *Commercial use request* means a request from, or on behalf of, a person who seeks information for a use or purpose that furthers the commercial,

trade, or profit interests of the requester or the person on whose behalf the request is made. The use to which a requester will put the records sought will be considered in determining whether the request is a commercial use request.

(g) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(h) *Non-commercial scientific institution* means an institution that is not operated on a for-profit basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Examples of news media entities include television and radio stations broadcasting to the public at large, and publishers of periodicals (but only those publishers who qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as new methods of news dissemination evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(j) *Business information* means trade secrets or other commercial or financial information.

(k) *Business submitter* means any commercial entity which provides business information to ACTION and which has a proprietary interest in such information.

(l) *Appeal* means the appeal by a requester of an adverse Agency determination on his/her request, or on his/her application for a waiver of fees, as described in 5 U.S.C. 552(a)(6)(A)(ii).

§ 1215.3 Availability of records.

(a) All publications and other documents heretofore provided by ACTION to the public in the normal course of Agency business will continue to be made available upon request to the Agency.

(b) The Agency will promptly make available to any member of the public who requests them, the following Agency records:

(1) Final opinions and orders made in the adjudication of cases;

(2) Statements of policy and interpretation adopted by an office which have not been published in the *Federal Register*; and

(3) Administrative staff manuals and instructions to the staff which affect the public.

(c) A current index, which shall be updated at least quarterly, of the foregoing materials, is maintained by the Agency, and copies of same or any portion thereof will be furnished upon request. The Agency deems further publication of such index in the *Federal Register* unnecessary and impractical.

(d) To the extent necessary to prevent a clearly unwarranted invasion of personal privacy, the Agency may delete identifying details from materials furnished under this section.

(e) Brochures, leaflets, and other similar published materials shall be furnished to the public on request to the extent they are available. Copies of any such materials which are out of print shall be furnished at the cost of duplication, provided, however, that, in the event no copy exists, the Agency shall not be responsible for reprinting the document.

(f) All records of ACTION which are requested by a member of the public in accordance with the procedures established in this part shall be timely made available for inspection or copying, at the Agency's option, except to the extent that the Agency determines such records are exempt from disclosure under the Act.

(g) The Agency will not be required to create new records, compile lists of selected items from its files, or provide a requester with statistical or other data (unless such data have been compiled previously and are available in the form of a record, in which event such data shall be made available as provided in this part).

§ 1215.4 Location of records.

(a) The Agency maintains a central records room at its headquarters, located at 1100 Vermont Avenue NW., Washington, DC 20525. The specific location of the central records room may

change from time to time, but may be ascertained by inquiry to the receptionist in the Office of the Director, ACTION.

(b) The Agency maintains regional offices in the following locations:

Region I—Boston, Massachusetts (Connecticut, Maine, Massachusetts, New Hampshire, Vermont and Rhode Island)

Region II—New York, New York (New Jersey, New York, Puerto Rico and Virgin Islands)

Region III—Philadelphia, Pennsylvania (Delaware, District of Columbia, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and West Virginia)

Region IV—Atlanta, Georgia (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina and Tennessee)

Region V—Chicago, Illinois (Illinois, Indiana, Iowa, Michigan, Minnesota and Wisconsin)

Region VI—Dallas, Texas (Arkansas, Kansas, Louisiana, Missouri, New Mexico, Oklahoma and Texas)

Region VIII—Denver, Colorado (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming)

Region IX—San Francisco, California (American Samoa, Arizona, California, Guam, Hawaii and Nevada)

Region X—Seattle, Washington (Alaska, Idaho, Oregon and Washington)

ACTION also maintains offices in most States, usually in the State capital.

These field offices are not responsible for maintaining indexes, reading rooms, or records or documents other than those created and maintained in the normal course of the official business of such offices.

§ 1215.5 Record request and response procedures.

(a) *How made and addressed.*

Requests under the Act for access to ACTION records must be in writing, and must either be mailed or hand-delivered to the FOIA Officer, 1100 Vermont Avenue NW., Washington, DC 20525. All such requests, and the envelopes in which they are sent, must be plainly marked "FOIA Request". Hand-delivered requests will be received between 8:30 a.m. and 5 p.m., Monday through Friday, except on official holidays.

(b) *Agreement to pay fees.* The filing of a request under this subpart shall be deemed to constitute an agreement by the requester to pay all applicable fees under § 1215.7 of this part, up to \$25, unless a waiver of fees is sought in the request letter. When filing a request, a

requester may agree to pay a greater amount, if applicable.

(c) *Request must adequately describe the records sought.* A request must describe the records sought in sufficient detail to enable Agency personnel to locate the records with reasonable effort. A request shall be regarded as fulfilling this requirement if it enables the Agency to identify responsive documents without unreasonable burden to or disruption of Agency operations. Persons wishing to inspect or secure copies of records should describe and identify such records as fully and as accurately as possible. Among the kinds of identifying information which a requester may provide are the following:

(1) The unit or program of the Agency which may have produced or may otherwise have custody of the record, e.g., VISTA (Volunteers In Service To America), RSVP (Retired Senior Volunteer Program), FGP (Foster Grandparent Program);

(2) The specific event or action, if any, to which the record pertains;

(3) The date of the record, or the time period to which it refers or relates;

(4) The type of record (e.g., application, contract, grant or report);

(5) The name(s) of Agency personnel who may have prepared or been referenced in the record; and

(6) Citation to newspapers or other publications which refer to the record.

(d) *Initial processing.* Upon receipt of a request for Agency records, the FOIA Officer will make an initial determination as to whether the request describes requested records with sufficient specificity to determine the office of the Agency having custody of any responsive records. If so, upon making such initial determination, he/she shall refer such request to the head of the custodial office. The office head shall promptly ascertain whether the description of record(s) requested is sufficient to permit a determination as to existence, identification, and location. The FOIA Officer will provide FOIA guidance and assistance to the ACTION staff.

(e) *Insufficiently identified records.* On making a determination that the description contained in the request does not sufficiently describe a requested record, the FOIA Officer shall promptly so advise the requester in writing and by telephone if possible. The FOIA Officer shall provide the requester with appropriate assistance to help the requester provide any additional information which would better identify the record.

The requester may submit an amended request providing the

necessary additional identifying information. Such a request shall be deemed to have been received by the Agency on the date it receives the amended request.

(f) *Release of record; denial and right to appeal.* Upon receipt of a request specifically identifying existing Agency records, the Agency shall, within ten working days, either grant or deny the request in whole or in part, as provided in this subpart. Any notice of denial in whole or in part shall also inform the requester of his/her right to appeal the denial, in accordance with the procedures set forth at § 1215.9 below.

If the FOIA Officer determines that a request describes a requested record sufficiently to permit its identification, he/she shall make it available unless he/she determines, after consultation with the General Counsel, as appropriate, to withhold the record as exempt from mandatory disclosure under the Act.

(g) *Form and content of notice granting a request.* The Agency shall provide written notice of a determination to grant a request. Such notice shall describe the manner in which the record will be disclosed, whether by providing a copy of the record to the requester or by making the record available to the requester for inspection at a reasonable time and place. The procedure for inspection shall not unreasonably disrupt the operations of the Agency. The Agency shall inform the requester in the notice of any fees charged in accordance with the provisions of § 1215.7 of this part.

(h) *Form and content of notice denying a request.* The Agency shall notify a requester in writing of the denial of a request in whole or in part. Such notice shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason or reasons for the denial, including the exemption or exemptions under the Act on which the Agency has relied in denying the request, and a specific explanation of the manner in which the exemption or exemptions apply to each record withheld; and

(3) A statement that the denial may be appealed under § 1215.9 of this part, and a copy of that section.

§ 1215.6 Time limits and extensions.

(a) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, are mandatory, and a person requesting records shall be deemed to have exhausted his/her administrative remedies with respect to such request in

the event the Agency fails to comply with the applicable time limits in accordance with this section.

(b) The time limits specified for the Agency's initial response in § 1215.5, and for its determination on an appeal in § 1215.9, may be extended by the Agency upon written notice to the requester which sets forth the reasons for such extension and the date upon which the Agency will respond to the request. Such extension may be applied at either the initial response stage or the appeal stage, or both, provided the aggregate of such extensions shall not exceed ten working days. Circumstances justifying an extension under this subpart may include the following:

(1) Time necessary to search for and collect requested records from field offices of the Agency;

(2) Time necessary to locate, collect and review voluminous records responsive to a single request; or

(3) Time necessary for consultation with another agency having an interest in the request; or among two or more offices of ACTION which have an interest in the request; or with a submitter of business information having an interest in the request.

§ 1215.7 Schedule of fees.

(a) It is the policy of ACTION to encourage the widest possible dissemination of information concerning the programs under its jurisdiction. To the extent practicable, its policy will be applied under this part so as to permit requests for inspection of copies of records to be met without substantial cost to requesters.

(b) Request processing charges will be determined by category of request, as follows:

(1) *Commercial use requests.* When a request for records is made for commercial use, charges will be assessed to cover the costs of searching for, reviewing for release, and reproducing the records sought.

(2) *Requests for educational and non-commercial scientific institutions.* When a request for records is made by an educational or a non-commercial scientific institution in furtherance of scholarly or scientific research, respectively, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(3) *Requests from representatives of the news media.* When a request for records is made by a representative of the news media for the purpose of news dissemination, charges will be assessed to cover the cost of reproduction alone, excluding charges for reproduction of the first 100 pages.

(4) *All other requests.* When a request for records is made by a requester who does not fit into any of the preceding categories, charges will be assessed to cover the costs of searching for and reproducing the records sought, excluding charges for the first two hours of search time and for reproduction of the first 100 pages. (However, requests from individuals for records about themselves contained in the Agency's systems of records will be treated under the fee provisions of the Privacy Act of 1974 which permit the assessment of fees for reproduction costs only, regardless of the requester's characterization of the request).

(c) Fees assessed shall provide only for recovery of the Agency's direct costs of search, review, and reproduction. Review costs shall include only the direct costs incurred during the initial examination of a record for the purposes of determining whether a record must be disclosed under this part and whether any portion of a record is exempt from disclosure under this part. Review costs shall not include any costs incurred in resolving legal or policy issues raised in the course of processing a request or an appeal under this part.

(d) When the Agency believes that a requester or group of requesters has divided one request into series of requests for the purpose of evading the assessment of fees, the Agency may treat such requests as a single request.

(e) The following charges may be assessed for copies of records provided to a requester:

(1) Copies made by photostat shall be charged at the rate of \$0.10 per page.

(2) Searches for requested records performed by clerical/administrative personnel shall be charged at the rate of \$3.00 per quarter hour.

(3) Where a search for requested records cannot be performed by clerical/administrative personnel (for example, where the tasks of identifying and compiling records responsive to a request must be performed by a skilled technician or professional), such search shall be charged at the rate of \$5.50 per quarter hour.

(4) Computer searches for requested records shall be charged at a rate commensurate with the combined cost of computer operation and operator's salary attributable to the search.

(f) In the event a request for records does not state that the requester will pay all reasonable costs, or costs up to a specified dollar amount, and the FOIA Officer determines that the anticipated assessable costs for search, review and reproduction of requested records will exceed \$25.00, or will exceed the limit specified in the request, the requester

shall be promptly notified in writing and by telephone. Such notification shall state the anticipated assessable costs of search, review and reproduction of records requested. The requester shall be afforded an opportunity to amend the request to narrow the scope of the request, or, alternatively, may agree to be responsible to pay the anticipated costs. Such a request shall be deemed to have been received by the Agency upon the date of receipt of the amended request.

(g) Advance payment of assessable fees are not required from a requester unless:

(1) The Agency estimates or determines that assessable charges are likely to exceed \$250.00, and the requester has no history of payment of FOIA fees. (Where the requester has a history of prompt payment of fees, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment.)

(2) A requester has previously failed to pay a FOIA fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing).

When the Agency acts under paragraph (g) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the Act will begin to run only after the Agency has received fee payments or assurances.

(h) Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest will be assessed at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of billing.

(i) Payment of fees shall be forwarded to the FOIA Officer by check or money order payable to "ACTION." A receipt for any fees paid will be provided upon written request.

(j) Charges may be assessed for search and review time, even if the Agency fails to locate records responsive to a request if records located are determined to be exempt from disclosure.

(k) No fee shall be charged if the costs of routine collection and processing of the fee will equal or exceed the amount of the fee.

(1) A requester may, in the original request, or subsequently, apply for a waiver or reduction of document search, review and reproduction fees. Such application shall be in writing, and shall set forth in detail the reason(s) a fee waiver or reduction should be granted. The amount of any reduction requested shall be specified in the request. (See appendix A—Sample Request Letter.) Upon receipt of such a request, the

FOIA Officer shall refer the request to the Deputy Director or to such official as the Deputy Director may designate, who shall promptly determine whether such fee waiver or reduction shall be granted.

(2) A waiver or reduction of fees shall be granted only if release of the requested information to the requester is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Agency, and is not primarily in the commercial interest of the requester. The Agency shall consider the following factors in determining whether an application for a fee waiver or reduction will be granted:

(i) Does the requested information concern the operations or activities of the Agency?

(ii) If so, will disclosure of the information be likely to contribute to public understanding of the Agency's operations and activities?

(iii) If so, would such a contribution be significant?

(iv) Does the requester have a commercial interest that would be furthered by disclosure of the information?

(v) If so, is the magnitude of the identified commercial interest of the requester sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester? In applying this criterion, the Agency will weigh the requester's commercial interest against any public interest in disclosure. Where there is a public interest in disclosure, and the public interest can fairly be regarded as being of greater magnitude than the requester's commercial interest, a fee waiver or reduction will be granted. In those instances where a news media requester, scholar, or public interest group has satisfied the "public interest" standard necessary for waiver, that, and not the requester's commercial interest, is the interest primarily served by disclosure to that requester and a waiver or reduction of fees will be granted.

(3) When a fee waiver application involving cost has been included in a request for records, the request shall not be deemed to have been received until an Agency determination is made regarding the fee waiver application. Such determination shall be made within five working days from the date any such request is received by the Agency.

(l) The Agency may use the authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), including disclosure to consumer reporting agencies and the use of collection

agencies, to encourage payment of delinquent fees.

§ 1215.8 Business Information.

(a) Business information provided to ACTION by a business submitter shall be disclosed pursuant to a request under the Act in accordance with this section.

(b) The Agency shall promptly notify a business submitter in writing of any request for Agency records containing business information. Such written notice shall either specifically describe the nature of the business information requested or provide copies of the records, or portions thereof containing the business information.

(c) Through the notice required in paragraph (b) of this section, the Agency shall afford a business submitter a reasonable opportunity to object to disclosure of the information in question, and to provide the Agency with a written statement of grounds for such objection.

Such statement shall specify all grounds for withholding any information under any exemption of the Act and, in cases where it argues information should be withheld under Exemption (b)(4) of the Act, a business submitter shall state specifically why the information is a trade secret or is otherwise protected as proprietary commercial or financial information. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Act.

(d) The Agency shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to release requested business information. Whenever the Agency decides to disclose business information over the objection of a business submitter, the Agency shall forward to the business submitter a written notice of such decision, which shall include:

(1) The name, and title or position, of the person responsible for denying the submitter's objection;

(2) A statement of the reasons for which the business submitter's objection was not sustained;

(3) A description of the business information to be disclosed; and

(4) A specific disclosure date.

Such notice of intent to disclose business information shall be mailed by the Agency not less than six working days prior to the date upon which disclosure will occur, with a copy of such notice to the requester.

(e) Whenever a requester brings suit to compel disclosure of business information, the Agency shall promptly notify the business submitter.

(f) The notice to submitter requirements of this section shall not apply if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1215.9 Appeal procedures.

Upon receipt of a notice of denial, a requester may, within 15 calendar days from the date of receipt of such notice, appeal such adverse determination to the Deputy Director. Such appeal shall be in writing and shall specify the date upon which the notice of denial was received by the person making such appeal. (See appendix 1 (A & B)—Sample Request and Appeal Letters.) The Deputy Director shall make a determination with respect to any appeal within 20 working days after receipt of such appeal, and shall give written notice of such determination to the person making the appeal. To the extent the Deputy Director's determination on appeal upholds the original denial, the notice of such determination shall inform the person making the appeal of his/her right to seek judicial review of the Agency's denial and ruling on appeal as provided in 5 U.S.C. 552(a)(4).

Appendix 1(A)—Freedom of Information Act Request Letter (Sample)

Freedom of Information Act Officer

Name of Agency

Address of Agency

City, State, Zip Code

Re: Freedom of Information Act Request.

Dear _____:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents [or documents containing the following information] be provided to me: [identify the documents or information as specifically as possible].

In order to help to determine my status to assess fees, you should know that I am (insert a suitable description of the requester and the purpose of the request).

[Sample requester descriptions:

—a representative of the news media affiliated with the _____ newspaper (magazine, television station, etc.), and this request is made as part of news gathering and not for a commercial use.

—affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly or scientific purpose and not for a commercial use.

—an individual seeking information for personal use and not for a commercial use.

—affiliated with a private corporation and am seeking information for use in the company's business.]

[Optional] I am willing to pay fees for this request up to a maximum of \$_____. If you estimate that the fees will exceed this limit, please inform me first.

[Optional] I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. [Include a specific explanation.]

Thank you for your consideration of this request.

Sincerely,

Name
Address
City, State, Zip Code
Telephone Number [Optional]

Appendix 1(B)—Freedom of Information Act Appeal Letter (Sample)

Appeal Officer
Name of Agency
Address of Agency
City, State, Zip Code

Re: Freedom of Information Act Appeal.

Dear _____:

This is an appeal under the Freedom of Information Act.

On (date), I requested documents under the Freedom of Information Act. My request was assigned the following identification number _____.

On (date), I received a response to my request in a letter signed by (name of official). I appeal the denial of my request.

[Optional] The documents that were withheld must be disclosed under the FOIA because

[Optional] I appeal the decision to deny my request for a waiver of fees. I believe that I am entitled to a waiver of fees. Disclosure of the documents I requested is in the public interest because the information is likely to contribute significantly to public understanding of the operation or activities of government and is not primarily in my commercial interest. (Provide details)

[Optional] I appeal the decision to require me to pay review costs for this request. I am not seeking the documents for a commercial use. (Provide details)

[Optional] I appeal the decision to require me to pay search charges for this request. I am a reporter seeking information as part of news gathering and not for commercial use.

Thank you for your consideration of this appeal.

Sincerely,

Name
Address
City, State, Zip Code
Telephone Number [Optional]

(42 U.S.C. 5042(13); 5 U.S.C. 552)

Issued at Washington, DC, on May 9, 1990.

Jane A. Kenny,

Director.

[FR Doc. 90-11271 Filed 5-14-90; 8:45 am]

BILLING CODE 6050-20-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88-17; Notice 2]

RIN 2127-AC65

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Federal Motor Vehicle Safety Standard No. 108 to incorporate by reference (with minor exceptions) the current SAE Standards for stop lamps and turn signal lamps. The principal substantive effect of the rule is to require vehicles whose overall width is 80 inches or more to be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches, which is presently required only if those lamps are spaced less than 22 inches apart. Other amendments are adopted essentially as proposed.

DATES: The overall effective date of the rule is December 1, 1990. The requirement for stop lamps and turn signal lamps with a larger minimum luminous lens area on certain vehicles is effective December 1, 1991. The Director of the Federal Register approves the incorporation by reference of certain SAE Standards in 49 CFR 571.108 effective December 1, 1990.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, NHTSA (202-366-5271).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this subject was published September 9, 1988 (53 FR 35097). Comments were received from the Truck Safety Equipment Institute (TSEI), Grote Manufacturing Company, Peterson Manufacturing Company, Truck Lite, Hella AG., Ford Motor Company, Chrysler Motors, Volkswagen of America (VW), and Volvo of North America.

1. Updating Certain SAE Standards Incorporated by Reference

Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* incorporates by reference SAE Standard J586c *Stop Lamps*, August 1970, and SAE Standard J588e *Turn Signal Lamps*, September 1970, as the basic requirements for those items of motor vehicle lighting equipment. NHTSA's

proposal granted a petition by TSEI for rulemaking to amend Standard No. 108 to substitute four updated SAE standards for the two presently incorporated. The updated standards are SAE J586 FEB84 *Stop Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width*, SAE J588 NOV84 *Turn Signal Lamps for Use on Motor Vehicles Less Than 2032 mm in Overall Width*, SAE J1395 APR85 *Turn Signal Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width*, and SAE J1398 MAY85 *Stop Lamps for Use on Motor Vehicles 2032 mm or More in Overall Width*. In its new standards, the SAE distinguishes between vehicles whose overall width is less than 80 inches (2032 mm), and vehicles of greater width, a distinction made from the beginning by Standard No. 108 in its Tables. TSEI supported its petition with the argument that the Society of Automotive Engineers had determined that it was desirable to adopt separate standards for certain devices when used on wider vehicles, which because of their size should be more conspicuous and better delineated with lighting devices than smaller vehicles. In the final rule, NHTSA has adopted the SAE revisions, with the exceptions proposed in 1988, subject to the comments discussed below.

A. Increase in Minimum Lens Area for Wide Vehicles

Until now, the minimum lens area for turn signal and stop lamps on vehicles 80 inches and wider has been 8 square inches, except that if the stop and turn signal lamps are mounted less than 22 inches apart, lenses with a minimum area of 12 square inches are required. The new SAE standards increase the minimum to 12 square inches regardless of the mounting location. In proposing the adoption of this requirement, NHTSA accepted the rationale of the SAE that the increase for all wider vehicles is necessary regardless of lamp spacing because they are susceptible to build up of grime, and concluded that an increase in lens area would enhance vehicle conspicuity and contribute to safety.

Five comments were received on this aspect of the proposal. Volvo believes that wide vehicles currently meet the specification. Peterson, Truck Lite, Grote, and Chrysler supported it. Chrysler, however, questioned applying the requirement to dual rear wheel pickup trucks, which are derivatives from those of lesser width, and asked that they be exempted from the requirement, or that a 3-year leadtime be afforded for compliance. Truck Lite

read the SAE requirements as applying to each compartment of a multiple compartment lamp, and asked that the requirement apply to a multicompartment lamp *in toto*.

NHTSA notes that Chrysler's wide body pickup trucks are already equipped with identification and clearance lamps, lighting equipment not required for the pickup trucks from which they are derived. NHTSA does not believe that Chrysler has shown good cause for exempting widebody pickups from one of the requirements for wide truck lighting, while maintaining in effect the other requirements. The agency believes that widebody lighting should be consistent, and therefore has denied Chrysler's request for an exemption. Because lamps are readily available that meet the requirement, NHTSA regards Chrysler's request for 3 years in which to comply as excessive. However, it is establishing an effective date for this requirement of approximately 18 months after publication of this rule, which should afford sufficient time for compliance by the 1992 model year.

The agency has carefully reviewed Truck Lite's comment, and concurs in its interpretation that the SAE materials appear to require compliance of each compartment with the minimum lens area specification. In the older SAE materials, there are different photometric requirements depending on the number of compartments and the number of lamps in a system. Since the new standard contains only one set of photometric specifications, there appears to be no reason to require one level of performance from a lamp with a single compartment, and a multiple of that level of performance from a lamp with more than one compartment. However, in 4.1.5.2, there is a requirement that each compartment of a multicompartment lamp meet the photometric specifications. If read literally, this would mean that a lamp with one compartment would meet the minimum intensity values shown in Table 1 of the SAE standards, but that a lamp with five compartments would have to have minimum intensity values that are five times those for the single compartment lamp. The agency does not believe that this is the effect that the SAE hoped to achieve with these revisions. There is no discussion of why this reference to individual compartments is retained, even though the photometric specifications have been changed. This inclusion of reference to individual compartments seems to be an inappropriate provision. A similar situation exists for the area of

the lamp and compartments. Paragraph 5.3.2 specifies that each compartment of a multicompartment lamp must be at least 12 square inches. There appears to be no basis for this either, and the agency has adopted a clarification.

Truck Lite also expressed concern that auxiliary stop and turn signal lamps would be required, under the amendments, to meet the same minimum lens area requirements as equipment installed in compliance with the standard. NHTSA does not interpret the new SAE materials as having this effect. The auxiliary lamps are subject only to the general requirement for supplementary lamps that they not impair the effectiveness of lighting equipment required by Standard No. 108.

B. Maintenance of Minimum Lens Area for Narrower Vehicles

The new SAE standards reduce the minimum lens area for rear turn signal lamps and stop lamps on vehicles whose overall width is less than 80 inches from 8 square inches to 6 square inches. NHTSA did not concur, and, in the interest of safety, proposed an exception that retains the current minimum of 8 square inches.

The proposal to retain the existing requirement of a minimum of 8 square inches was supported by TSEI, Grote, Peterson, and Truck Lite, and opposed by VW and Ford. Those who supported the proposal did so on the basis that there is no need to change a requirement presently in effect and being met. Further, the masking effects of road grime, dirt, and winter slush will be greater on lamps with smaller lens areas. Finally, smaller lenses may be subject to a greater likelihood of distortion caused by internally-generated heat.

Those who opposed the proposal commented that a reduction of 2 square inches is supported by recent research, while NHTSA's current requirement is unsupported. More specifically, commenters pointed to recent studies, including a report, UMTRI-86-28 "Evaluation of Brake-lamp Photometric Requirements". In this report, a test is described that used lamps with lenses of 12 and 24 square inches. UMTRI found that at a distance of 50 feet, the average or equivalent luminance of the lamp was a better predictor of reaction time than was luminous intensity. However, at a longer distance (145 feet), luminous intensity was the best predictor. Based on these findings, UMTRI concluded that the use of luminous intensity as the photometric parameter for stop lamps was appropriate. This experiment was conducted under simulated daytime

conditions, and did not address the question of glare and its relationship to either luminous intensity or luminance. Although the experiment did not include lamps with lenses of either 6 or 8 square inches, the results seem to support the position that area is not as important as intensity.

SAE has also run several tests which have addressed this question. Ford has cited these tests and certain findings as a primary basis for the recommendation to reduce the minimum lens area from 8 to 6 square inches, e.g., that observers found "acceptable" a 6-square-inch area, and that the difference in attention-getting quality between the two lamps was not statistically significant. NHTSA observes that the SAE tests do seem to support the UMTRI conclusion that intensity should be the primary parameter for stop lamp photometrics. With respect to specific tests, the agency notes that in the SAE study of October 15, 1980, examining effectiveness of yellow and red signals under both daytime and nighttime conditions, at 50 and 500 feet, lamps with lenses of 8 square inches were judged more acceptable than those with 6. In the test of September 10, 1981, there was a slight tendency to mistake a stop lamp for a taillamp when lamps of 80 cd and lenses of 4 square inches were used. In the daytime tests run at Ottawa on October 5, 1982, a lamp with a lens of 8 square inches was judged slightly more attention getting than one with 20 square inches (no lenses of 6 square inches were used in these tests).

Ford also provided a review of contrast in light of the work done by Blackwell. The analysis provided by Ford suggests that the contrast of a target of either 6 or 8 square inches would exceed the threshold value of contrast for the example that it chose. This analysis appears consistent with the SAE test results. These tests and the Ford analysis suggest that there is little difference in conspicuity between lamps with lenses of either 6 or 8 square inches.

A related question is whether a lamp with a lens area of 6 square inches would produce excessive glare when compared to the glare from a lamp with a lens area of 8 square inches and of the same candela. Currently there is no basis for answering this question.

One of the requirements for the center highmounted stop lamp is that it have a lens area not less than 4.5 square inches. Many lamps are close to this minimum, and when the lamp first appeared, the agency had some complaints about glare. However, none of the complaints included details of area and intensity.

The complaints, though anecdotal in nature, could indicate that small stop lamps may produce glare that reaches the level of discomfort.

On balance, the agency did not find a dispositive basis either for or against adoption of the proposal to retain lenses at their present minimum size. Therefore, NHTSA believes there is justification in retaining the present minimum area requirements rather than proceeding to a smaller lens that may raise questions of glare creation and other concerns.

C. The Turn Signal—Headlamp Intensity Multiplier

An additional difference between the new SAE turn signal specifications and the ones currently contained in Standard No. 108 concerns intensity. If a turn signal lamp is closer than 4 inches (100 mm) to a lower beam headlamp, it must have 2.5 times the intensity otherwise required. The SAE applies the factor of 2.5 only if the turn signal is closer than 60 mm to the lower beam headlamp. NHTSA proposed retention of the current requirement. The SAE specification applies the photometric multiplier in three steps, from 60 mm to 100 mm. VW stated that the failure of NHTSA to adopt the SAE requirement was design restrictive and not in the interests of harmonization. Ford also supported the graduated turn signal intensity multiplier, as did Hella, Peterson, Grote, and TSEI supported retention of the existing requirement.

Ford based its argument on SAE Information Report J1221 DEC84 *Headlamp-Turn Signal Spacing* which documents the change in the SAE specifications. NHTSA notes that the research in the Report was performed in 1977, which was before higher intensity headlamps which comply with SAE J579c were in common use. As these headlamps are now in almost universal use in the United States, NHTSA regards the earlier research as not truly relevant today. Given the advent and usage of higher intensity headlamps, there appears to be an even greater need than before to preserve the intensity ratio. NHTSA has done so by retaining the existing requirement.

D. The Vibration Test

A further difference between old and new SAE standards concerns the vibration test equipment; the new SAE standards reference SAE J575 JUL83 which specifies a test environment and a "shaker type" vibration machine that differ from those specified in SAE Standard J575, July 1970, currently applicable in Standard No. 108 to vibration tests for turn signal lamps,

stop lamps, and other types of lighting equipment. The agency saw no safety purpose served by introduction of a different vibration test requiring different test protocols for turn signal lamps and stop lamps, depending upon whether they were manufactured as original or replacement equipment. It proposed to retain the 1970 vibration test requirements for equipment covered by the new SAE standards.

The proposal was supported by Truck Lite, Grote, TSEI, and Peterson, principally on the basis that current lamps were specifically built to withstand this test, and that it has proven its worth over the years. Ford opposed the test as too severe; in its view, the new SAE test is more representative of real world conditions.

NHTSA notes that work has begun within the SAE and other industry organizations to develop a new vibration requirement, reflecting the fact that the 1983 test is not universally accepted. When the SAE has developed this test, NHTSA will review it. Until such time, the agency will retain the existing 1970 test.

E. Zonal Photometric Measurement

The new SAE standards provide that photometric compliance is determined through sums of test points within a group, instead of doing so at individual test points. Because this is an option currently permitted by Standard No. 108, an amendment of the standard to adopt the SAE updates will result in the option becoming the mandatory requirement. Truck Lite, Peterson, Grote, and TSEI supported the effect of the proposal to make mandatory the previous option of measuring photometrics according to groups of test points. The SAE standards also contain a restriction, not previously in Standard No. 108, that the value measured at any test point be at least 60% of the required minimum for that test point. This would ensure that the performance of the lamp does not depart too much from the intent of its designer. No comments were received on this point. Adoption of the updated standards requires amendment of S5.1.1.11, with respect to motorcycle turn signal lamps, to substitute reference to the new SAE requirements for Figure 1b. This notice makes that amendment.

2. Definitions

NHTSA proposed that definitions be adopted for the terms "Functional Lighted Area", "Multiple Compartment Lamp", and "Multiple Lamp Arrangement". The new SAE standards use the term "functional lighted area" instead of "effective projected luminous lens area" presently used in Standard

No. 108. NHTSA sought comment with supporting data or arguments on whether it was more desirable to require compliance with the "projected area", or with the actual lens area as in the new SAE standards. The notice asked whether the new language eliminated or reduced problems of interpretation associated with such phrases as "barely lighted perimeter area" and "beads and rims". Conversely, NHTSA asked whether it would be more appropriate to use a proposed ECE definition of "illuminating surface" (TRANS/SCI/WP29/R.388, Proposed Revision of Regulation No. 48).

There were no comments regarding the proposed definitions of "Multiple Compartment Lamp" and "Multiple Lamp Arrangement", other than by Peterson, which supported them. They have been adopted as proposed. With respect to "Functional Lighted Area", Grote prefers this term instead of either "effective projected luminous lens area" or the ECE definition of illuminating surface. However, Truck Lite favors "effective projected luminous lens area". Ford suggested using a definition appropriate for "effective projected luminous lens area" that NHTSA had used in past interpretations, and Peterson suggested a new definition for that term which would be similar to that provided in interpretations.

NHTSA has carefully reviewed these comments. The ECE definition is the most objective of these terms, involving the measurement of light output as the means of establishing the boundary of the area. However, the size of the area that may be established using that procedure could be larger than the actual lens area. For example, the size for a circular lens, as established by the ECE procedure, may be as much as 27 percent larger than the actual lens area.

NHTSA's past interpretations have failed to indicate that the part of the lens that is the basis for the measurement is "the part of the lens optical system that directs light to the photometric test pattern" (the phrase used in the proposal). Thus, the interpretations are also unsuitable as the complete definition. Peterson commented on this failure, and addressed it by suggesting use of the term "that area of the light emitting surface."

The definition that the agency proposed in 1988 would use the actual area of the lens instead of a projection of the lighted area of the lens. None of the other definitions incorporate actual area. Vehicle operators see the projected area rather than the actual area. Also, measurement of actual area

would be more difficult than measurement of projected area. Therefore, the agency has decided that the definition adopted should be for the projected area, and has adopted a modification of the definition proposed. The clarification suggested by Peterson is also incorporated. Because the SAE uses the term "Functional Lighted Lens Area", a new section S6.3 has been added to clarify that the term "Effective Projected Luminous Lens Area" is identical to it, and should be substituted wherever it appears in the SAE materials incorporated by reference and subreference in Standard No. 108.

3. Miscellaneous

In accordance with past practice, replacement stoplamps and turn signal lamps may continue to be designed to conform with the same versions of the SAE standards as the equipment they replace, and appropriate amendments are adopted in S5.1.1.6 and S5.1.1.7 to clarify this point. Tables I and III are amended by replacing the references to the old SAE standards for turn signal lamps and stop lamps with the new ones.

4. Effective Dates

The effective date of this final rule is December 1, 1990, except that the requirement that vehicles whose overall width is 80 inches or more be equipped with stoplamps and rear turn signal lamps with a minimum luminous lens area of 12 square inches is effective December 1, 1991. The agency notes that Volvo requested a lead time of 2 years, and Chrysler, an effective date of September 1, 1993. Equipment is currently available that meets the requirements, but the retooling involved in equipping vehicles with these lamps provides sufficient cause for finding that an effective date later than one year after issuance is in the public interest, and the agency has chosen one that is approximately 18 months after issuance of the final rule.

5. Impacts

NHTSA has considered this rule and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation", nor significant under Department of Transportation regulatory policies and procedures. The rule requires larger rear turn signal and stop lamps on vehicles whose overall width exceeds 80 inches if the lamps are spaced more than 22 inches apart. According to the petitioner, vehicles 80 inches and wider have traditionally been equipped with the larger lamps that already meet the new requirement. Noting Chrysler's

comment that some of its vehicles will require conformance, the agency asked eight lamp and trailer manufacturers for their compliance status in informal telephone conversations. These manufacturers indicated that 99% of current production trucks and trailers already use the larger lamps. The remaining 1% appears comprised of 8 square inch lamps used on flat bed trailers. Because of the low volume of these lamps, it appears that the fleet cost of these lamps is 5% higher than those with lenses of 12 square inches. The agency therefore believes that there should be no discernable cost increase attributable to adoption of the rule. Therefore, a full regulatory evaluation is not necessary because the economic impacts of the rule are minimal.

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The rule will have no effect upon the human environment since NHTSA believes that the requirement is essentially already being met.

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. I certify that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and motor vehicle lamps, those affected by the rule, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions will not be significantly affected since the price of new vehicles and replacement lighting equipment will be minimally impacted.

Finally, the agency has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has concluded that the rule has no federalism implications. The rule would not establish a new area of Federal regulation but simply change the specifications of a system that has been Federally regulated since 1968. Under 15 U.S.C. 1392(d), a State may not establish or continue in effect a standard that differs from a Federal motor vehicle safety standard. The agency's examination of a sample of motor vehicle lighting laws of the larger States, did not reveal any State standard which might be preempted by the rule. However, NHTSA sought comments from States and other interested persons on whether the proposal would have any significant effect on state regulations, and received none.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, and Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 and § 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, is amended as follows:

1. The authority citation for part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. S4 *Definitions* is amended by adding the following definitions in alphabetical order:

* * * * *

Effective projected luminous lens area means that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas ($\frac{1}{2}$ deg. radius around the test point).

* * * * *

Multiple compartment lamp means a device which gives its indication by two or more separately lighted areas which are joined by one or more common parts, such as a housing or lens.

Multiple lamp arrangement means an array of two or more separate lamps on each side of the vehicle which operate together to give a signal.

* * * * *

3. S5.1.1.6 is amended by redesignating the text as paragraph (a), and by adding new paragraphs (b) and (c) to read:

* * * * *

(b) Each stop lamp manufactured to replace a stop lamp that was designed to conform to SAE Standard J586c, *Stop Lamps*, August 1970, may also be designed to conform to J586c

(c) A multipurpose passenger vehicle, truck, bus, or trailer whose overall width is 80 inches or more, manufactured on or before November 30, 1991, and whose stop lamps are located more than 22 inches apart, may be equipped with stop lamps designed to conform to SAE Standard J586c, *Stop Lamps*, August 1970.

4. S5.1.1.7 is amended by redesignating the text as paragraph (a),

and by adding new paragraphs (b) and (c) to read:

(b) Each turn signal lamp manufactured to replace a turn signal lamp that was designed to conform to SAE Standard J588e, *Turn Signal Lamps*, September 1970, may also be designed to conform to SAE Standard J588e. Note 6 of Table 1 of SAE Standard J588e does not apply. A stop lamp that is not optically combined with a turn signal lamp shall remain activated when the turn signal is flashing.

(c) A multipurpose passenger vehicle, truck, bus, or trailer, whose overall width is 80 inches or greater, manufactured on or before October 31, 1991, and whose turn signal lamps are located more than 22 inches apart, may be equipped with turn signal lamps designed to conform to SAE Standard J588e, *Turn Signal Lamps*, September 1970.

5. The first sentence of S5.1.1.11 is revised to read:

S5.1.1.11 A parking lamp, tail lamp, stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c, *Stop Lamps*, August 1970, or turn signal lamp manufactured to replace a turn signal lamp that was designed to conform to SAE Standard J588e, *Turn Signal Lamps*, September 1970, shall meet the minimum percentage specified in Figure 1a of the corresponding minimum allowable value specified in Figure 1b. * * *

6. In the last sentence of S5.1.1.11 the words "Figure 1b" are removed, and "Table 1 and Table 3 of SAE J588 NOV84 *Turn Signal Lamps*" are inserted in their place.

7. S5.1.1.12 is revised to read:

S5.1.1.12 A parking lamp, tail lamp, stop lamp manufactured to replace a stop lamp designed to conform to SAE Standard J586c *Stop Lamps*, August 1970, or turn signal lamp manufactured to replace a turn signal lamp manufactured to conform to SAE Standard J588e, *Turn Signal Lamps*, September 1970, is not required to meet the minimum photometric value at each test point specified in this standard if the sum of the percentages of the minimum candlepower measured at the test points is not less than that specified for each group listed in Figure 1c.

8. New sections S5.1.1.30 and S5.1.1.31 are added to read:

S5.1.1.30 On a motor vehicle whose overall width is less than 80 inches:

(a) The functional lighted lens area of a single compartment stop lamp, and a single compartment rear turn signal lamp, shall be not less than 50 square centimeters.

(b) If a multiple compartment lamp or multiple lamps are used to meet the photometric requirements for stop lamps and rear turn signal lamps, the functional lighted lens area of each compartment or lamp shall be at least 22 square centimeters, provided the combined area is at least 50 square centimeters.

S5.1.1.31 On a motor vehicle, except a passenger car, whose overall width is 80 inches or more, measurements of the functional lighted lens area, and of the photometrics, of a multiple compartment stop lamp, and a multiple compartment turn signal lamp, shall be made for the entire lamp and not for the individual compartments.

9. S5.3.1.7 is revised to read:

S5.3.1.7 On a motor vehicle on which the front turn signal lamp is less than 100 mm from the lighted edge of a lower beam headlamp, the multiplier applied to obtain the required minimum luminous intensities shall be 2.5.

10. In S6.1, the exception clause of the first sentence is revised to read:

S6.1 * * *, except that the SAE standard referred to as "J575" is J575e, *Tests for Motor Vehicle Lighting Devices and Components*, August 1970, for stoplamps designed to conform to SAE Standards J586c, J586 FEB84, and J1398 MAY85; for tail lamps designed to conform to SAE Standards J585d and J585e; for turn signal lamps designed to conform to SAE Standards J588e, J588 NOV84, and J1395 APR85; and for high-mounted stoplamps designed to conform to SAE Recommended Practice J186a. * * *

11. New section S6.3 is added to read:

S6.3 The term "effective projected luminous lens area" has the same meaning as the term "functional lighted lens area" in any SAE Standard or Recommended Practice incorporated by reference or by subreference in this standard.

12. In Table I, the applicable SAE standard (final column) for stop lamps is revised to read "SAE J1398 MAY85", and for turn signal lamps "SAE J1395 APR85".

13. In Table III, the applicable SAE standard (final column) for stop lamps is revised to read "SAE J586 FEB84", and for turn signal lamps "SAE J588 NOV84".

14. In Tables I and III, in the first column, the number "2" referencing footnote 2 is removed from "Stoplamps" and "Turn signal lamps".

Issued on April 10, 1990.

Jerry Ralph Curry,
Administrator.

[FR Doc. 90-11030 Filed 05-14-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80349-8098]

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Notice of Texas closure adjustment.

SUMMARY: NOAA announces an adjustment of the dates of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure, normally between June 1 and July 15 each year, will commence at 12:01 a.m., May 17, 1990, and will terminate 30 minutes after sunset on July 15, 1990. The adjustment is a response to biological data that indicate early migration of brown shrimp from Texas estuaries and is intended to protect small shrimp from capture by trawls.

EFFECTIVE DATES: The EEZ off Texas is closed to trawl fishing from 12:01 a.m., May 17, 1990, to 30 minutes after sunset on July 15, 1990.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico, as provided by the Magnuson Fishery Conservation and Management Act. The implementing regulations at 50 CFR 658.25 describe the Texas closure and provide for adjustments to the closing and opening dates by the Director, Southeast Region, NMFS, under specified criteria.

Available information meeting the criteria specified in 50 CFR 658.25(b)(1) indicates that an early closure is warranted and desirable. Biological data collected by the Texas Parks and Wildlife Department indicate an early migration of small brown shrimp from the Texas bay systems. An average predicted total length of brown shrimp of 80 to 90 millimeters in the central and northern bays of Texas and the predicted strength of the outgoing tides on and after May 15, 1990, indicate that the closure should commence on May 15, 1990, and terminate on July 15, 1990. However, NOAA is limited by 50 CFR 658.25(b) to an adjustment to the normal closing date of June 1 of no more than 15 days. Therefore, the earliest the EEZ off Texas can be closed to trawl fishing is May 17.

From 12:01 a.m., May 17, 1990, to 30 minutes after sunset on July 15, 1990, the area described at § 658.25(a) is closed to all trawl fishing, except that a vessel may fish for royal red shrimp beyond the 100-fathom depth contour. The waters of Texas will also be closed during this period.

Other Matters

This action is authorized by 50 CFR 658.25 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 9, 1990.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management.

[FR Doc. 90-11224 Filed 5-10-90; 9:43 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 94

Tuesday, May 15, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-67-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require modification of certain hydraulic lines in the number 2 and 3 struts. This proposal is prompted by reports of chafing of the hydraulic and pneumatic lines. This condition, if not corrected, could lead to loss of hydraulic power and damage to pneumatic ducts.

DATES: Comments must be received no later than July 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-67-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1955. Mailing address: FAA, Northwest Mountain

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

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-67-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A recent incident of smoke in the cockpit of a Boeing Model 747 series airplane was caused by inadequate clearance between the number 3 strut hydraulic pressure line and a pneumatic duct. Chafing resulted in failure of the hydraulic line and pneumatic duct and allowed hydraulic fluid to enter the pneumatic system. There have been other reports of chafing that were detected before a failure occurred. This condition, if not corrected, could result in failure of hydraulic systems, failure of a pneumatic duct, and, if both occur, contamination of the cabin air supply system.

The FAA has reviewed and approved Boeing Service Bulletin 747-29-2051, Revision 1, dated August 8, 1980, which provides instructions for replacement and rerouting of certain hydraulic lines

in the number 2 and 3 struts for better clearance.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require replacement of the hydraulic pressure and supply lines in the number 3 strut, and replacement of the case drain line in the number 2 strut, in accordance with the service bulletin previously described.

There are approximately 296 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 136 airplanes of U.S. registry would be affected by this AD, that it would take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The cost for replacement parts is estimated at \$3,250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$670,480.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Boeing: Applies to Model 747 series airplanes, line position 001 through 331, identified in Boeing Service Bulletin 747-29-2051, Revision 1, dated August 8, 1980, certificated in any category. Compliance required within the next 3,000 flight hours or 12 months time-in-service after the effective date of this AD, whichever occurs first, unless previously accomplished.

To prevent damage to hydraulic and pneumatic systems and flight deck/cabin air contamination, accomplish the following:

A. Modify the hydraulic system in the number 2 and 3 struts in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747-29-2051, Revision 1, dated August 8, 1980.

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

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

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

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

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-11238 Filed 05-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-53-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAC 1-11 series airplanes, which would require repetitive visual inspections to detect cracks in the elevator lower control lever assemblies located at the base of the fin rear spar, and replacement, if necessary. This proposal is prompted by a recent report of two cracks found in the eye-end of the elevator lower control lever assembly. This condition, if not corrected, could result in loss of structural integrity in one of the two load paths and subsequent reduction in airplane stability and controllability.

DATES: Comments must be received no later than July 5, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-53-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

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

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-53-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAC 1-11 200 and 400 series airplanes. There has been a recent report of two cracks found in the eye-end of one of the two elevator lower control lever assemblies located at the base of the fin rear spar. Further examination of the cracked lever revealed it was manufactured from an L53 specification aluminum alloy material, and the cracks were most likely due to a combination of mechanical loading, residual stresses, and change of material properties associated with aging. Cracks in this area can lead to bearing migration and loss of structural integrity of the half of the dual load path of the elevator control system where the cracks occur. Loss of structural integrity in one of the two load paths causes a loss in control system stiffness. This condition, if not corrected, could result in reduced airplane stability and controllability.

British Aerospace has issued Alert Service Bulletin 27-A-PM5871, Issue No. 1, dated October 4, 1989, which describes procedures for repetitive visual inspections to detect cracks in both elevator lower control lever assemblies, and replacement, if necessary. The United Kingdom CAA has classified this service bulletin as mandatory.

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

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive visual inspections to detect cracks in both elevator lower control lever assemblies, and replacement if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$16,800.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

British Aerospace: Applies to Model BAC 1-11 200 and 400 series airplanes, as listed in British Aerospace Alert Service Bulletin 27-A-PM5871, Issue No. 1, dated October 4, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a reduction in airplane stability and controllability, accomplish the following:

A. Within 60 days after the effective date of this AD, unless accomplished within the last 12 months, and thereafter at intervals not to exceed 18 months, perform a visual inspection of both elevator lower control levers, in accordance with paragraphs 2.1 and 2.3 through 2.9 of British Aerospace Alert Service Bulletin 27-A-PM5871, Issue No. 1, dated October 4, 1989.

B. If cracks are found, prior to further flight, replace the elevator control lever(s) in accordance with the British Aerospace Alert Service Bulletin 27-A-PM5871, Issue No. 1, dated October 4, 1989.

C. Replacement of both elevator lower control levers with levers manufactured from L84 or L99 material, terminates the requirement for the repetitive inspections required by paragraph A., above.

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

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

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

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

Issued in Seattle, Washington, on May 4, 1990.

Steven B. Wallace,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 90-11234 Filed 5-14-90; 8:45 am]
BILLING CODE 4010-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-25]

Proposed Alteration of VOR Federal Airway, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 89-AWP-25, which was published in the Federal Register on January 16, 1990. That NPRM proposed to alter the description of VOR Federal Airway V-111 located in the vicinity of San Jose, CA. The realignment was proposed to improve the flow of traffic around the congested San Jose metropolitan area. Based on evaluations of subsequent changes to airspace designations and air traffic procedures in the area, it has been determined that this action is no longer necessary.

DATES: This withdrawal is effective May 14, 1990.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

The Proposed Rule

On January 16, 1990, a Notice of Proposed Rulemaking was published in the Federal Register to alter VOR Federal Airway V-111 located in the vicinity of San Jose, CA (55 FR 1452). This route was proposed from Salinas, CA, to Modesto, CA, to improve the flow of traffic around the congested San Jose metropolitan area.

Conclusions

Based on evaluations subsequent to recent airspace, procedural, and other operational changes in the airspace surrounding the San Francisco Bay area, the FAA has concluded that the proposed realignment of V-111 in the San Jose area between Salinas, CA, and Modesto, CA, is no longer required. We

are therefore withdrawing Airspace Docket No. 89-AWP-25.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking, Airspace Docket No. 89-AWP-25, as published in the *Federal Register* on January 16, 1990 (55 FR 1452) is hereby withdrawn.

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

Issued in Washington, DC, on April 30, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-11237 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AGL-3]

Proposed Alteration of VOR Federal Airways V-158 and V-420

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of VOR Federal Airways V-158, located in the state of Illinois; and V-420, located in the states of Wisconsin and Michigan. The airway change to V-158 would provide an airway to join the V-158 bypass routing around Chicago O'Hare Air Traffic Control Tower (ATCT) airspace for aircraft en route to Chicago from the northwest. Also, this action would remove that segment of the airway along V-420 between the Bradford very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) to the Malta intersection, which is not being used by Air Traffic Control (ATC).

DATES: Comments must be received on or before June 25, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 90-AGL-3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AGL-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of VOR Federal Airways V-158, located in the state of Illinois; and V-420, located in the states of Wisconsin and Michigan. The airway change to V-158 would provide an airway to join the V-158 bypass routing around Chicago O'Hare ATCT airspace for aircraft en route to Chicago from the northwest. The section of the airway between the Bradford VORTAC and the Malta intersection along V-420 is not being used by ATC. Therefore, we propose to remove that section of V-420 between Bradford VORTAC and the Malta intersection. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

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

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

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-158 [Amended]

By removing the words "Polo, IL" and substituting the words "Polo, IL; to the INT Polo 122°T(119°M) and Rockford, IL, 169°T(168°M) radials."

V-420 [Revised]

From Green Bay, WI; via Traverse City, MI; Gaylord, MI; to Alpena, MI.

Issued in Washington, DC, on May 3, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-11236 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 9**

[Notice No. 702; Re: Notice No. 693]

Revision of the Boundary of the Chalk Hill Viticultural Area (88F-283P)

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

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 693, published in the *Federal Register* on December 12, 1989 (54 FR 51039). Notice No. 693 proposed the revision of the northern boundary of the Chalk Hill viticultural area to include a portion of Chalk Hill Road north of Chalk Hill. The proposed boundary would create a new area of overlap with the Alexander Valley viticultural area.

The comment period is being reopened based on a written request from Mr. Frederick P. Furth of the Chalk Hill Winery.

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

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No.).

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7626.

SUPPLEMENTARY INFORMATION:**Background**

On December 12, 1989, ATF published Notice No. 693 in response to a petition

submitted by T. Clifford Melim, Jr., of Chalk Hill Vineyards proposing to revise the northern boundary of Chalk Hill viticultural area to include the portion of Chalk Hill Road north of Chalk Hill. The comment period on Notice No. 693 closed on January 26, 1990.

ATF has received a written request from Mr. Frederick P. Furth of the Chalk Hill Winery to reopen the comment period. Mr. Furth stated that he intends to submit a comment in opposition to the proposed revision of the boundary of the Chalk Hill viticultural area. He requested additional time to gather data and formulate his comments. Since the Chalk Hill Winery is located within the viticultural area which would be affected by the proposed boundary revision, ATF considers Mr. Furth's request to be a valid reason for reopening the comment period. Therefore, the comment period is being reopened until June 29, 1990.

Disclosure

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information. The principal author of this document is David W. Brokaw, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance. This notice is issued under the authority contained in 27 U.S.C. 205.

Signed: May 3, 1990.

Stephen E. Higgins,

Director.

[FR Doc. 90-11122 Filed 5-14-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 286b**

[OSD Administrative Instruction No. 81]

Privacy Program

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Proposed exemption rule. Proposed addition of a general exemption rule (j)(2) under the Privacy Act for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add a new general exemption rule for a new system of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The

system of records is identified as DWHS P42.0, "DPS Incident Reporting and Investigations Case Files".

DATES: Comments must be received on or before June 14, 1990.

ADDRESSES: Forward any comments to Mr. Dan Cragg, Chief, Records Management and Privacy Act Branch, Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, DC 20301-1155. Telephone (202) 695-0970.

SUPPLEMENTARY INFORMATION: A new exempt system of records has been created and is maintained within the Office of the Secretary of Defense. A general exemption is required to protect the information contained therein from certain disclosures. This proposed general exemption rule is to be added to existing OSD exemption rules found at § 286b.7.

List of Subjects in 32 CFR Part 286b**Privacy.**

Accordingly, the Department of Defense proposes to amend 32 CFR part 286b as follows:

PART 286b—PRIVACY PROGRAM

1. The authority citation for 32 CFR part 286b continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 286b.7 is amended to add paragraph (b) as follows:

§ 286b.7 Procedures for exemptions.

(b) *General exemptions.* The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by law enforcement activities. Certain functional records of subject activities are not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any state of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System Identification and Name*—DWHS P42.0, "DPS Incident Reporting and Investigations Case Files".

Exemption—Portions of this system which fall within 5 U.S.C. 552a(j)(2) are

exempt from the following provisions of 5 U.S.C. 552a, Sections (c)(3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

Authority—5 U.S.C. 552a(j)(2).

Reason—The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provision of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

L.M. Bynum,

Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 90-11061 Filed 5-10-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3777-5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection
Agency.

ACTION: Proposed rule and request for
comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by I.R. International, Sandston, Virginia, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an

evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the transport model used to evaluate the petition. Comments will be accepted until June 29, 1990. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by May 30, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-IREP-FFFFF."

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used To Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

For this delisting determination, the Agency used this information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of I.R. International's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable

worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because I.R. International sends the petitioned waste to an off-site disposal facility for final disposal, ground-water monitoring data collected at the petitioner's facility would not characterize the effects of the petitioned waste on the aquifer underlying the off-site disposal facility. Therefore, the Agency did not request ground-water data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Petition

I.R. International, Sandston, Virginia

1. Petition for Exclusion

I.R. International (IRI), located in Sandston, Virginia, manufactures metal rollers used in printing and embossing operations. IRI has petitioned the Agency to exclude its wastewater

treatment sludge filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes:

- (1) Sulfuric acid anodizing of aluminum;
- (2) tin plating on carbon steel;
- (3) zinc plating (segregated basis) on carbon steel;
- (4) aluminum or zinc-aluminum plating on carbon steel;
- (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and complexed cyanide (see 40 CFR § 261, Appendix VII).

IRI petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. IRI claims that its treatment process will generate a non-hazardous waste because the constituents of concern, if present in the waste, are in an essentially immobile form. IRI also believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors which could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of IRI's petition.

2. Background

IRI petitioned the Agency on March 30, 1989, to exclude its wastewater treatment filter cake from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, and subsequently provided information to complete its petition. In support of its petition, IRI submitted: (1) Detailed descriptions and schematic diagrams of its manufacturing and waste treatment processes; (2) a list of all raw materials used in both the manufacturing and treatment processes; (3) total and EP toxicity concentration data for all the EP toxic metals, nickel, and cyanide from representative samples of the wastewater treatment sludge; (4) total concentration data from representative samples for ethyl methacrylate and methyl methacrylate, which are listed in appendix VIII of 40 CFR part 261 as hazardous constituents; (5) total concentration data for reactive cyanide and reactive sulfide from

representative samples; (6) total oil and grease content data from representative samples; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

IRI manufactures metal rollers used in printing and embossing operations. The rollers, after machining, are washed with water and Ajax and sent to one of three electroplating processes:

(1) Copper plating; (2) nickel flashing followed by chromium plating; or (3) copper plating followed by chromium plating. The rollers plated in each of these electroplating processes are then rinsed with water, after which the chromium-plated rollers undergo de-chroming and are washed again with water. Following rinsing operations, printing patterns are etched onto the roller surface either mechanically or chemically. Some rollers are cleaned with methyl ethyl ketone (MEK) after etching to remove inks applied to the rollers in the proofing room. (There are no drains, sumps, or other pathways by which contaminated residuals from the use of MEK can enter IRI's wastewater treatment system.) Finally, the etched rollers are welded, ground, and machined.

IRI's treatment system receives wastewaters generated from four different cleaning processes that take place during the production of rollers. The primary cleaning process represents over 90% of wastewaters entering the treatment system and involves the rinsing of rollers following the machining, plating, and de-chroming operations. The other wastewaters received by the treatment system are generated during three other cleaning processes: (1) Rinsing of the chromium tank mist eliminators used in the roller plating operation; (2) cleaning of the chemical spray etcher used in the roller etching operation; and (3) blowdown of the boiler water used to supply steam to the plant. The wastewaters generated from these four cleaning processes are collected in a single holding pit and transferred to the treatment tank. In the treatment tank, either sodium hydroxide or sulfuric acid is automatically added to reach a neutral pH, and sodium hydrosulfite is added to reduce hexavalent chromium to trivalent chromium. The wastewater is then transferred to the neutralization tank where sodium hydroxide is added to stabilize the pH at 8.0. The resulting wastewater is pumped to a flocculation tank for metal precipitation and then to the clarifier for settling of sludge. The clarified (thickened) sludge flows to the filter press where water is removed and the sludge is pressed into filter cake.

Filtrate from the filter press is discharged to IRI's National Pollutant Discharge Elimination System (NPDES) permitted outfall. The filter cake is collected and stored in 55-gallon drums and subsequently disposed off site. The filter cake is the subject of IRI's petition.

To collect representative samples from filter presses like IRI's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over time (e.g., grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

IRI collected a total of sixteen grab samples of wastewater treatment sludge filter cake that was generated over a period of less than 90 days. Sixteen drums were randomly selected for sampling from a total of approximately 44 drums according to the procedure described in "Waste Analysis Plans: A Guidance Manual" U.S. EPA, Office of Solid Waste, (EPA/530-SW-84-012), October 1984. Each drum represented about four days of waste generation. One full-depth core sample was taken from each drum by pushing a four-foot-long PVC pipe through the filter cake to the bottom of the drum. Sets of four independent core samples were combined at the laboratory into four composite samples. Each composite sample was analyzed for both the total concentrations (i.e., mass of a particular constituent per mass of waste) and the extraction procedure (EP) leachate concentrations (i.e., mass of a particular constituent per unit volume of extract) of all the EP toxic metals, nickel and cyanide. The composite samples were also analyzed for total concentrations of ethyl methacrylate, methyl methacrylate, reactive cyanide, and reactive sulfide, and for total oil and grease content.

IRI sampled its wastewater treatment sludge filter cake a second time and collected ten grab samples from filter cake that was generated over a period of approximately 20 days. IRI collected independent full-depth core samples using a sampling auger from each of the ten drums. The grab samples were combined to produce four composite samples (two composite samples consisting of three grab samples and two composite samples consisting of

two grab samples). The four composite samples were analyzed for total and EP leachate concentrations of nickel. IRI claims that, due to a consistent manufacturing and treatment process, the constituent concentrations determined in the waste sample analyses are representative of any variation in wastewater treatment sludge constituent concentrations.

3. Agency Analysis

IRI used SW-846 Methods 7030-7760 to quantify the total constituent concentrations and SW-846 Method 1310 to quantify the leachable concentrations of the EP toxic metals and nickel in the waste. IRI used Method 335.3 to quantify the total concentration and the EP leachable concentration of cyanide and Method 413.1 to determine total oil and grease content (see "Methods for Chemical Analysis of Water and Wastes," U.S. EPA Environmental Monitoring and Support Laboratory, (PE84-128677), March 1983). IRI used SW-846 Method 8240 to quantify total concentrations of ethyl methacrylate and methyl methacrylate. IRI used SW-846 Methods 9010 and 9030 to quantify the total concentrations of reactive cyanide and reactive sulfide, respectively.

Table 1 presents the maximum total concentrations of the EP toxic metals, nickel, cyanide, ethyl methacrylate, and methyl methacrylate. Table 2 presents the maximum EP leachate values of the EP toxic metals, nickel, and cyanide. (Analysis for EP leachable concentrations of sulfide (or reactive sulfide) was not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide.)

TABLE 1.—MAXIMUM TOTAL CONCENTRATIONS (mg/kg) WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituents	Total concentrations
Arsenic.....	21
Barium.....	30
Cadmium.....	<1
Chromium.....	34,000
Lead.....	151
Mercury.....	0.090
Selenium.....	<0.2
Silver.....	1
Nickel.....	15,860
Cyanide.....	<0.01
Ethyl methacrylate.....	<9
Methyl methacrylate.....	<9

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

TABLE 2.—MAXIMUM EP LEACHATE CONCENTRATIONS (mg/l) WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituents	EP leachate concentrations
Arsenic.....	<0.01
Barium.....	<1
Cadmium.....	<0.01
Chromium.....	0.4
Lead.....	0.1
Mercury.....	<0.01
Selenium.....	<0.01
Silver.....	<0.01
Nickel.....	4.17
Cyanide.....	<0.01

<: Denotes that the constituent was not detected at the detection limit specified in the Table.

Detection limits represent the lowest concentrations quantifiable by IRI when using the appropriate analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies, and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

IRI determined that its waste had a maximum oil and grease content of 2300 mg/kg (0.23 percent); therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease could either have significant concentrations of the constituents of concern in the oily phase, which may not be assessed using the standard EP leachate procedure, or the concentrations of oil and grease could be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW-846 method number 1330. On the basis of results provided by IRI pursuant to 40 CFR 260.22, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23.

IRI submitted a signed certification stating that based on current annual waste generation, their maximum annual generation rate of wastewater treatment sludge filter cake is 38.3 tons. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate an estimated waste volume. EPA accepts IRI's certified estimate of 38.3 tons (approximately 37 cubic yards).

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant IRI's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and

accurate results. The Agency, however, conducts a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select this facility in the future for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter cake wastes and decided that disposal in a landfill is the most reasonable, worst-case scenario. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the ability of a toxicant within the aquifer to dilute for a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of IRI's petitioned waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous constituents detected in the EP extract of IRI's wastewater treatment sludge filter cake. The Agency's evaluation of chromium, lead, and nickel, using the annual waste volume of 37 cubic yards and the maximum reported EP leachate concentrations of these three inorganic constituents of concern, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, barium, cadmium, mercury, selenium, silver, and cyanide) from IRI's waste because they were not detected in the EP extract using the appropriate SW-846 analytical test methods (see Table 2). The Agency also did not evaluate the mobility of the organic constituents because they were not detected using the appropriate SW-846 test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable

value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS: CALCULATED COMPLIANCE-POINT CONCENTRATIONS; LISTED AND NON-LISTED CONSTITUENTS OF CONCERN; WASTEWATER TREATMENT SLUDGE FILTER CAKE

Constituents	Compliance-point concentrations (mg/l)	Levels of regulatory concern (mg/l) ¹
Chromium.....	0.0124	0.05
Lead.....	.0031	.05
Nickel.....	.1291	.70

¹ See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The waste exhibited chromium, lead, and nickel levels at the compliance point below the health-based levels used in delisting decisionmaking. The maximum reported concentration of reactive cyanide in IRI's waste is <5 ppm and the maximum reported concentration of reactive sulfide in IRI's waste is <30 ppm, both of which are below the Agency's interim standards of 250 ppm and 500 ppm, respectively. See "Interim Agency Threshold for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing IRI's processes and raw materials list, that no other hazardous constituents of concern are being used by IRI, and that no other constituents of concern are likely to be present or formed as reaction products or by-products in IRI's waste. In addition, the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that IRI has successfully demonstrated that its wastewater treatment system can render the F006 wastes non-hazardous. IRI's manufacturing and waste treatment processes are believed to be uniform and consistent because the facility does not perform as a job shop or have seasonal product variations. The Agency believes that the samples of treated waste analyzed reflect the day-to-day variations in manufacturing and treatment processes intended to be used

thereafter. The Agency, therefore, is proposing that IRI's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to IRI, located in Sandston, Virginia, for its wastewater treatment sludge filter cake described in its petition as EPA Hazardous Waste No. F006. If the proposed rule becomes effective, the wastewater treatment sludge filter cake would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

If made final, the exclusion will apply only to the processes and waste volume covered by the original demonstration. If the facility's manufacturing or treatment processes are significantly altered, such that an adverse change in waste composition or increase in waste volume occurs, the exclusion would no longer apply and the facility would be required to manage its waste in accordance with subtitle C regulations. The facility would need to file a new petition to be able to manage the altered waste as a non-hazardous waste. The facility must treat waste generated from changed processes or wastes in excess of the amount stated in the petition as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous

wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: May 3, 1990.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In table 1 of appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
I.R. International.	Sandston, Virginia.	Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F006) generated (at a maximum annual rate of 37 cubic yards) from electroplating operations. This exclusion was published on [insert date of final rule's publication in the Federal Register].

[FR Doc. 90-11283 Filed 5-14-90; 8:45 am]

BILLING CODE 6550-50-M

Notices

Federal Register

Vol. 55, No. 94

Tuesday, May 15, 1990

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

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Shasta Wilderness Plan

AGENCY: Forest Service, USDA.

ACTION: Extension of time to comment on Draft Environmental Impact Statement.

SUMMARY: The Forest Service will extend the comment period on the Draft Environmental Impact Statement (DEIS) for the Mt. Shasta Wilderness Plan, Mount Shasta and McCloud Ranger Districts, Shasta-Trinity National Forests, Siskiyou County, California. An additional thirty (30) days will be added to the 45 day comment period.

DATES: Comments concerning the DEIS must be received by June 7, 1990.

ADDRESSES: Written comments concerning the DEIS must be sent to: Forest Supervisor (Attn: Mt. Shasta Wilderness DEIS) Shasta-Trinity National Forests, 2400 Washington Ave., Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: Questions about this time extension and the environmental impact statement should be directed to Garry Oye, EIS Team Leader, Mt. Shasta Ranger District, Phone Number: 916-926.4511.

SUPPLEMENTARY INFORMATION: The DEIS was released March 16th, 1990, and the Environmental Protection Agency (EPA) published a notice of availability in the Federal Register on March 23, 1990. The extension is being granted due to requests from four interested groups.

The comment period on the DEIS will not be 75 days from the date the EPA's notice of availability appeared in the Federal Register. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. The

reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement (FEIS).

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by July, 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: May 8, 1990.

Robert R. Tyrrel,

Forest Supervisor, Shasta-Trinity National Forests.

[FR Doc. 90-11217 Filed 5-14-90; 8:45 am]

BILLING CODE 3410-11-M

National Agricultural Statistics Service

Survey Program Changes for FY 1990

Notice is hereby given that the National Agricultural Statistics Service (NASS) will make the following survey program changes for FY 1990.

- Delay implementation of the monthly agricultural yield survey until 1991 for minor corn, soybean, and cotton States. For FY 1990, beginning August 1, NASS will add the following States to the monthly agricultural yield survey program: Arkansas, California, Iowa, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, South Dakota, Texas, and Wisconsin.

- Delay the first Wheat Objective Yield Survey visit in Kansas, Oklahoma, Texas (High Plains), and Arkansas until June 1.

- Drop California from the rice objective yield program.

- Drop Georgia, Kentucky, Tennessee, and North Carolina while adding Kansas to the soybean objective yield program.

These survey program changes are being made to accommodate FY 1990 budget restrictions. None of the changes will affect the published estimates and forecasts to be issued by NASS.

Comments regarding these modifications should be addressed to Rich Allen, Deputy Administrator for Programs, NASS/USDA, Washington, D.C. 20250.

Done at Washington, DC this 9th day of May 1990.

Charles E. Caudill,
Administrator.

[FR Doc. 90-11214 Filed 5-14-90; 8:45 am]

BILLING CODE 3410-20-M

COMMISSION ON CIVIL RIGHTS

Wyoming Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Wyoming Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 2 p.m., on June 2, 1990, at the Casper Hilton Inn, 800 North Poplar, Casper, Wyoming 82601. The purpose of the meeting is to obtain information on civil rights issues in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald Tolin or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD) 213/894-0508. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division Office at least five (5) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, May 8, 1990.

Wilfredo J. Gonzalez,
Staff Director.

[FR Doc. 11215 Filed 5-14-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE**Bureau of Export Administration****Materials Technical Advisory Committee; Partially Closed Meeting**

A meeting of the Materials Technical Advisory Committee will be held June 7, 1990, 10:30 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda:**General Session**

1. Opening Remarks by the Chairman and Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Introduction of New Members.
5. Presentation by 3M Company on IL 1754 Fluorinated Polymers.
6. Report by Committee Members on Quarterly Review Assignments.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address:

Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue, NW., Room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings

found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: May 10, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 90-11200 Filed 5-14-90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-122-057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 14, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers one producer and/or exporter of this merchandise to the United States, Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt Ltd.) ("Allatt"), and the period September 1, 1987 through December 31, 1988. We determine the dumping margin for Allatt to be 9.47 percent during the review period.

EFFECTIVE DATE: May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Authur N. DuBois or Richard Rimlinger, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-8312/1130.

SUPPLEMENTARY INFORMATION:**Background**

On August 14, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 33260) the preliminary results of its administrative review of the antidumping duty finding on

replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811; September 7, 1977). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment from Canada, excluding parts for attachments. During the review period, such merchandise was classified under items 652.1540, 652.1825, 652.3530, 678.5097, 680.2500, 680.3300, 685.9026, 685.9500, 686.8040, 688.1800, 712.4900, and 773.2500 of the *Tariff Schedules of the United States Annotated* ("TSUSA"). This merchandise is currently classified under *Harmonized Tariff Schedule* ("HTS") items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, and 9015.30.40. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The administrative review covers one exporter of this merchandise to the United States, Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc., formerly Fortress Allatt Ltd., and the period September 1, 1987 through December 31, 1988.

United States Price

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed, f.o.b. prices to unrelated purchasers in the United States. We made deductions, where applicable, for U.S. and foreign inland freight, U.S. duty, brokerage charges, warranty expense, discounts, and indirect selling expenses. An addition was made for taxes which were rebated or not collected by reason of exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating FMV, the Department used all the timely home market price information contained in Allatt's questionnaire and supplemental responses. Where Allatt failed to provide such FMV information, we relied upon BIA.

Where FMV was based upon home market prices, such prices were based on the packed, ex-factory or delivered prices to unrelated purchasers. We made adjustments, where applicable, for discounts, inland freight, warranty expense, credit expense, and commissions to unrelated parties. We made a circumstance of sale adjustment where appropriate for tax differences resulting from our addition to the U.S. price of any taxes rebated or not collected by reason of exportation of this merchandise to the United States. When making comparisons for ESP sales, we deducted indirect selling expenses to offset U.S. selling expenses. No other adjustments were claimed or allowed.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. At the request of Allatt, we held a public hearing on October 5, 1989. We received comments from the petitioner, Blaw Knox Construction Equipment Corporation ("Blaw Knox"), and from the respondent, Allatt.

Comment 1: Allatt argues that the Department's use of best information otherwise available ("BIA") in the preliminary results is arbitrary and capricious. In the preliminary results, the Department used the antidumping rate of 30.61 percent, as calculated in the original fair value investigation. Allatt argues that the Department's use of BIA in this case is not mandated by the statute, implementing regulations, case law, or Department practice.

Allatt contends that it put forth its best efforts to respond in this case and has always done so in the past. Allatt further contends that it was prevented from fully responding in this case because of lack of manpower and the change in corporate ownership. Moreover, the Department has previously accepted untimely responses from Allatt without penalty. For these reasons, Allatt argues that the Department should not disregard the information contained in its questionnaire and supplemental responses.

Additionally, Allatt asserts that the Department should have accepted the company's deficiency response even if it was untimely. Allatt contends that the Department is not required to adhere to strict deadlines for the submission of questionnaire and deficiency responses. Allatt reasons that there is no statutory deadline for completion of administrative reviews.

Petitioner, Blaw Knox, contends that the Department should reject Allatt's questionnaire and supplemental

responses, because they were so incomplete that the Department could not have reviewed the information. The petitioner asserts that, under these circumstances, there is more than adequate justification pursuant to the statute for the use of BIA. The petitioner also notes that the U.S. Court of International Trade ("CIT") has rejected Allatt's argument that a lack of manpower constitutes a reasonable excuse for the filing of untimely responses. See *Tai Yang Metal Industrial Co., Ltd. v. United States*, 712 F. Supp. 973 (CIT 1989). Finally, the petitioner contends that the Department is required to reject any untimely information in accordance with 19 CFR 353.31 (1989).

Department's Position: We disagree with the respondent. Section 776(c) of the Act, together with the implementing regulations, authorizes the Department to resort to BIA when the agency does not receive a complete, accurate, or timely response. See 19 U.S.C. section 1677e(c); 19 CFR 353.37 (1989).

To determine whether the use of BIA was warranted in this administrative review, we sought to determine (1) whether respondent's questionnaire response, dated March 7, 1989, and its supplemental response, dated March 23, 1989, were incomplete (*Olympic Adhesives, Inc. v. United States*, Slip Op., 89-1367, 1, 17 (Fed Cir. March 28, 1990)), (2) whether the Department gave Allatt adequate notice to correct any deficiencies contained in its response (*id.*), and (3) whether respondent's deficiency response, dated June 15, 1990, was untimely. (19 U.S.C. 1677e(c); 19 CFR 353.31).

Allatt's questionnaire response was initially due on November 27, 1988. We granted Allatt two extensions of time to file its response and established January 19, 1989, as the revised deadline date. In addition, while compiling data for the initial questionnaire, Allatt requested another extension of time so that the review period could be expanded to coincide with a change in corporate ownership. We subsequently granted Allatt another extension and established February 15, 1989, as the revised deadline date.

We did not receive a response from Allatt until March 7, 1989. Furthermore, the response submitted on that date was deficient. Allatt did not provide foreign market value ("FMV") information for approximately one-fourth of the corresponding U.S. sales. Allatt's supplemental response, dated March 23, 1989, failed to correct this deficiency.

Consequently, on May 22, 1989, we issued a deficiency letter to Allatt. This letter requested, among other things,

that the company "submit foreign market value information for each part sold in the United States". The deficiency letter established June 6, 1989, as the deadline date for any deficiency response. We did not receive Allatt's deficiency response until June 15, 1989.

Moreover, respondent did not make a request in writing for another extension of time in accordance with 19 CFR 353.31. As a result, we returned this untimely deficiency response to the respondent in accordance with that regulation.

Based on these facts, we have determined that the use of BIA in this case is appropriate. First, respondent's questionnaire and supplemental responses were incomplete. Respondent had failed to provide approximately one-fourth of the information pertaining to FMV. Second, the Department's deficiency letter, dated May 22, 1989, adequately notified the respondent to provide the deficient FMV information. Third, Allatt's response to our May 22, 1989, deficiency letter was untimely.

Additionally, we made every effort to accommodate Allatt in its attempt to respond to the questionnaire. We granted Allatt three extensions of time to file its questionnaire response and even accepted its untimely questionnaire and supplemental responses. We did so, in part, because our previous practice of rejecting responses pursuant to our prior regulation, 19 CFR 353.46 (1987) was, admittedly, inconsistent.

By the time Allatt's deficiency response was due in this administrative review, however, the Department's current regulation governing time limits for written submissions, 19 CFR 353.31(b) (1989), was in effect. Pursuant to that regulation, the Department established June 6, 1989, as the time limit for the deficiency response in this case. Because Allatt submitted its response after that date, we determined that the response was untimely and returned the document to respondent in accordance with 19 CFR 353.31(b)(2).

Furthermore, Allatt failed to make a written request for another extension of time or direct such a request to the appropriate Department official (e.g., division director) in accordance with the regulation. See 19 CFR 353.31(b)(3).

We also disagree with the respondent that a lack of manpower constitutes an exception to the use of BIA. As correctly noted by petitioner, the CIT already has rejected this argument. (See *Tai Yang Metal*, 712 F.2d at 977). Finally, respondent's argument that the Department is not required to adhere to

time deadlines conflicts with 19 CFR 353.31 (1989).

Comment 2: Allatt contends that if the Department uses a BIA rate in the final results, it should not use the rate of 30.61 percent as calculated in the original fair value investigation. Allatt further contends that the Department should use as BIA the margin calculated in the previous administrative review. Allatt argues that since it responded only nine days late, the use of the 30.61 percent rate as BIA represents a flagrant abuse of authority. Respondent cites the *Final Results of Antidumping Duty Administrative Review: Steel Jacks From Canada*, 52 FR 32957 (September 1, 1987), as an example in which the Department chose not to select the most punitive rate.

Petitioner argues that the Department has the discretion to select the appropriate BIA rate. Petitioner cites *Chemical Products Corp. v. United States*, 645 F. Supp. 286 to support its argument. Petitioner also argues that the courts have upheld the Department's use of the rate from the original fair value investigation as BIA.

Department's Position: We agree with respondent in part. Therefore, we have revised our calculation of BIA for purposes of the final results. For the reasons discussed in our response to Comment One, we are accepting Allatt's March 7, 1989, questionnaire response and its March 23, 1989, supplemental response. As a result, we have used all the FMV information that Allatt provided in these responses to calculate a margin. We have applied the 30.61 percent BIA rate only to that portion of the U.S. sales data for which Allatt did not supply timely FMV information. The overall assessment rate is a weighted average of these rates.

The statute authorizes the Department to use BIA when a questionnaire response is partially complete. (See *Ansaldo Componenti, S.p.A. v. United States*, 628 F. Supp. 198, 205 (CIT 1986).) The statute also authorizes the Department to select BIA in a given case based upon the particular circumstances of that case. (*Final Results of Antidumping Duty Administrative Review: Steel Jacks From Canada*, 52 FR 32957 (1987).) It is our practice to evaluate the adequacy of the information on the administrative record and the degree of cooperation received in exercising our discretion to select BIA in a particular case. *Id.*; and 19 CFR 353.37.

We did not select the most adverse BIA rate in this case because Allatt provided the Department with adequate and timely information for three-fourths of the relevant sales and has been

extremely cooperative throughout the administrative review. This BIA rate is both sufficient to ensure timely submissions in future administrative reviews and is in accordance with the statute and the Department's regulations.

Final Results of Review

As a result of our comparison of United States price to foreign market value, we determined that for appraisal purposes the weighted-average margin for Allatt for the period September 1, 1987 through December 31, 1988 is 9.47 percent. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above rate shall be required for this firm.

For any future entries of this merchandise from a new exporter not covered by this or prior administrative reviews, whose first shipments occurred after December 31, 1988, and who is unrelated to any reviewed firm, or any previously reviewed firm, a cash deposit of 9.47 percent shall be required. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: May 7, 1990.
Eric I. Garfinkel,
Assistant Secretary for Import
Administration.
[FR Doc. 90-11203 Filed 5-14-90; 8:45 am]
BILLING CODE 3510-DS-M

[A-570-001]

Potassium Permanganate From the People's Republic of China; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on potassium permanganate from the People's Republic of China.

EFFECTIVE DATE: May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION: On February 1, 1990, the Department of Commerce ("the Department") published in the *Federal Register* (55 FR 3437) its intent to revoke the antidumping duty order on potassium permanganate from the People's Republic of China (49 FR 3897; January 31, 1984). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On January 31, 1990, Carus Chemical Co., the petitioner, requested an administrative review of the order for the period January 1, 1989 through December 31, 1989. On February 28, 1990, we initiated that administrative review (55 FR 7015). Therefore, we no longer intend to revoke the order.

Dated: May 4, 1990.
Joseph A. Spetrini,
Deputy Assistant Secretary for Compliance.
[FR Doc. 90-11202 Filed 5-14-90; 8:45 am]
BILLING CODE 3510-DS-M

[C-201-015]

Unprocessed Float Glass From Mexico, Preliminary Results of Countervailing Duty Administrative Review and Intent to Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review and intent to terminate suspended investigation.

SUMMARY: The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on unprocessed float glass

from Mexico. We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period January 1, 1987 through December 29, 1988. As a result of our review, we intend to terminate the suspended investigation. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1988, the Department of Commerce ("the Department") published in the *Federal Register* (53 FR 53045) the preliminary results of countervailing duty administrative review and tentative determination to terminate the suspended investigation on unprocessed float glass from Mexico (49 FR 7267; February 28, 1984). On February 22, 1990, the Department published the final results of that administrative review (55 FR 5870).

On February 29, 1988 and on February 27, 1989, the petitioner, PPG Industries Inc., requested administrative reviews of the suspension agreement for the periods January 1, 1987 through December 31, 1987 and January 1, 1988 through December 31, 1988, respectively. We initiated the reviews on March 25, 1988 (53 FR 9788) and April 6, 1989 (54 FR 13913), respectively.

In accordance with 19 CFR 355.42, termination of the suspended investigation will be effective as of the date of publication of the notice of tentative determination to terminate. Therefore, in accordance with 19 CFR 355.42(f), we have conducted a review of the period January 1, 1987 through December 29, 1988—the period between the end of the minimum two-year period of no bounty or grant and the tentative determination to terminate in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican unprocessed float glass, a type of flat glass produced by floating molten glass over a bed of molten tin. During the review period, such merchandise was classifiable under item numbers 543.2100 through 543.6900 of the *Tariff Schedules of the United States Annotated*. This

merchandise is currently classifiable under item numbers 7005.20.05, 7005.29.15, 7005.29.25 and 7005.10.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1987 through December 29, 1988 and nine programs. The signatories to the suspension agreement, Vitro Flotado, S.A. (Vitro Flotado) and Vidrio Plano de Mexico, S.A. (Vidrio Plano), accounted for more than 85 percent of exports of the subject merchandise to the United States during the review period.

Analysis of Programs

(1) FOMEX

The Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX) is a trust of the Mexican Treasury Department, with the National Bank of Foreign Trade acting as trustee for the program. The National Bank of Foreign Trade, through financial institutions, makes FOMEX loans available at preferential rates to manufacturers and exporters for pre-export and export financing. We consider both pre-export and export FOMEX loans to be export bounties or grants because these loans are given only on merchandise destined for export.

Exporters receive FOMEX loans that are tied to specific exports, and neither Vitro Flotado nor Vidrio Plano received FOMEX loans based on exports of the subject merchandise to the United States during the review period. Therefore, we preliminarily determine that the signatories have complied with the terms of the suspension agreement with respect to this program during the review period.

(2) Other Programs

We also examined the following programs and preliminarily determine that the signatories did not use them during the review period:

- (A) CEDI tax certificates;
- (B) Certificates for Fiscal Promotion (CEPROFI);
- (C) Import duty reductions and exemptions;
- (D) Preferential state investment incentives;
- (E) Delay of payment to PREMEX of fuel charges;
- (F) State tax incentives;
- (G) Debt/Equity swaps; and
- (H) NDP preferential discounts.

Preliminary Results of Review and Intent to Terminate

As a result of our review, we preliminarily determine that Vitro Flotado and Vidrio Plano have complied with the terms of the suspension agreement for the period January 1, 1987 through December 29, 1988.

The signatories have requested that the Department terminate the suspended investigation. In our last review, we determined that the signatories had complied with the terms of the suspension agreement for at least a two-year period. Because we preliminarily determine in the current review that the signatories have complied with the terms of the suspension agreement up to the date of publication of the tentative determination to terminate the suspended investigation, we intend to terminate the suspended investigation. The termination will not become final until the completion of this administrative review establishing that no bounty or grant was received during the period January 1, 1987 through December 29, 1988.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice and may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.18(e). Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review, intent to terminate, and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41 and 355.42).

Dated: May 7, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11206 Filed 5-14-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-007]

Pectin From Mexico; Final Results of Countervailing Duty Administrative Reviews and Termination of Suspended Investigation

AGENCY: International Trade Administrative/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews and termination of suspended investigation.

SUMMARY: On March 19, 1990, the Department of Commerce published the preliminary results of its administrative reviews and intent to terminate the suspended countervailing duty investigation on pectin from Mexico. We have now completed those reviews and determine that the only signatory to the suspension agreement, Grinsted de Mexico, S.A. de C.V., has complied with its terms during the period January 1, 1986 through December 31, 1987. As a result of the reviews, and in accordance with 19 CFR 355.25, we are terminating the suspended investigation.

EFFECTIVE DATE: May 15, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:**Background**

On March 19, 1990, the Department of Commerce ("the Department") published in the *Federal Register* (55 FR 10089) the preliminary results of its administrative reviews and intent to terminate the suspended countervailing duty investigation on pectin from Mexico (47 FR 54987; December 7, 1982). The Department has now completed those reviews in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of Review

Imports covered by these reviews are shipments of Mexican pectin, used as an ingredient in food and drugs. In food, pectin is used principally as a jelling agent for jams, jellies, and confectionery and as an ingredient in dairy products. During the review periods, such merchandise was classifiable under item 455.04 of the *Tariff Schedules of the United States*. This merchandise is currently classifiable under item 1302.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and

Customs purposes. The written description remains dispositive.

The reviews cover the only signatory to the suspension agreement, Grinsted de Mexico, S.A. de C.V. ("Grinsted"). Grinsted accounted for more than 85 percent of exports of the subject merchandise to the United States during the review periods. The reviews cover the period January 1, 1986 through December 31, 1987, and nine programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to terminate the suspended investigation. We received no comments.

Final Results of Review and Termination of Suspended Investigation

As a result of our reviews, we determine that Grinsted has complied with the terms of the suspension agreement for the period January 1, 1986 through December 31, 1987.

Because Grinsted has not applied for or received any bounty or grant on the subject merchandise for five consecutive years, and has provided, together with the Government of Mexico, certification that it will not apply for or receive any bounty or grant in the future, we are terminating the suspended investigation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22 and 355.25.

Dated: May 7, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-11205 Filed 5-14-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration**North Pacific Fishery Management Council; Public Meeting**

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Fishery Planning Committee will hold a public meeting on May 25, 1990, at 8:30 a.m., at the National Marine Fisheries Service, Alaska Fisheries Service Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA. The Committee will review a draft moratorium notice for publication in the *Federal Register* and develop further recommendations for the North Pacific Council. The Committee also will receive a progress report on development of the analysis for inshore-offshore allocations.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: May 9, 1990.

David S. Crestin,

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

[FR Doc. 90-11195 Filed 5-14-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia**

May 8, 1990.

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

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

SUMMARY: May 9, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Taillarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

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

The current limit for Categories 347/348 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see *Federal Register* notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Commissioner:

This directive amends, but does not cancel, the directive issued to you on June 23, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on May 9, 1990, the directive of June 23, 1989 is amended further to increase to 1,036,969 dozen¹ the limit for Categories 347/348, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-11201 Filed 5-14-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; New Record System Notice

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notice of a new system of records for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add a new record system to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C 552a).

DATES: The proposed action will be effective without further notice on June 14, 1990, unless comments are received which would result in a contrary determination.

ADDRESSES: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315,

Pentagon, Washington, DC 20301-1155. Telephone (202) 695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record systems notices subject to the Privacy Act of 1974, as amended, (5 U.S.C 552a) have been published in the Federal Register as follows:

50 FR 22090, May 29, 1985 (DoD compilation, changes follow)

51 FR 11803, Apr. 7, 1986

51 FR 11803, Apr. 7, 1986

51 FR 17508, May 13, 1986

51 FR 44668, Dec. 11, 1986

52 FR 23334, Jun. 19, 1987

52 FR 22837, Jun. 16, 1987

53 FR 15868, May 4, 1988

53 FR 27894, Jul. 25, 1988

54 FR 33756, Aug. 16, 1989

54 FR 43314, Oct. 24, 1989

A new record system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 23, 1990, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: May 7, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P42.0

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files.

SYSTEM LOCATION:

Defense Protective Service, Communications Center, Room 1A315, The Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the source of an initial complaint or allegation that a crime took place.

Witnesses having information or evidence about any aspect of an investigation.

Suspects in the criminal situation who are subjects of an investigation.

Subjects of investigations on noncriminal matters.

Current and former applicants for the position of Defense Protective Service Officers.

Sources of information and evidence. The identity of these individuals may be confidential as appropriate to the subject matter they contribute. These

files contain information vital to the outcome of administrative procedures and civil and criminal cases.

Individuals associated with terrorism or terrorist groups and activities and names of regional, nationwide, and worldwide terrorist organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil and administrative remedies may require their partial or total disclosure.

Security files contain information such as name, date and place of birth, address, Social Security number, education, occupation, experience, and investigatory material.

Contingency Planning/Analysis files contain information such as names and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities. File contains information about regional, nationwide, and worldwide terrorist organizations and their effects on security of DoD facilities under the jurisdiction of DPS. Intelligence briefs; tactical, operational, and strategic informational reports; regional and nationwide contingency analysis; contingency action plans; and patterns and trends of potential or actual terrorists or terrorist groups, or other activities that could disrupt the orderly operation of Defense-owned or controlled facilities over which the DPS has jurisdiction.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Cong.); 40 U.S.C 318, as delegated by Administrator, General Services Administration, to the Deputy Secretary of Defense, September 1987, and Executive Order 9397.

PURPOSE(S):

To assemble in one system information on (1) preliminary and other criminal investigation reports that are used to enforce criminal law and rules and regulations for punitive action; to prevent, control, or reduce crime and to apprehend criminals; and (2) contingency action plans that provide patterns and trends of potential or actual terrorists or terrorist groups or other activities that could disrupt orderly operation of DoD-owned or controlled facilities under the jurisdiction of DPS.

¹ The limit has not been adjusted to account for any imports exported after June 30, 1989.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To a Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency is aware of a violation or potential violation of civil or criminal law or regulation.

To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other officials engaged in investigating, or settling a grievance, complaint or appeal filed by an employee.

To various bureaus and divisions of the Department of Justice that have primary jurisdiction over subject matter and location which DPS shares.

To law enforcement agencies which have lawfully participated in and conducted investigation jointly with DPS.

Pursuant to the order of a court of competent jurisdiction, when the United States is party to or has interest in litigation, and using the records is relevant, necessary, and compatible with the purposes of collecting the information.

The Office of the Secretary of Defense (OSD) "Blanket Routine Uses" published at the beginning of OSD's compilation also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders in file cabinets. Magnetic media in controlled access areas for both on-line and storage disks.

RETRIEVABILITY:

Paper records by case control number and type of incident. Magnetic files by case control number, name, address, and physical description of subject individual.

SAFEGUARDS:

Paper records are stored in secure filing cabinets in a room with built-in 3-position dial-type combination safe lock. Computer records are maintained in limited access sites on a system protected by a software-controlled password system.

RETENTION AND DISPOSAL:

Paper records are retained and destroyed based on the below listed categories:

Records involving thefts of government or personal property will be kept on file for three (3) years and then destroyed.

Reports and directly related papers concerning specific incidents, circumstances, and conditions, such as facility problems, property damage, fire and fire drills, and similar matters will be held for one (1) year and then destroyed.

Documents created in arresting, releasing from arrest and obtaining statements concerning offenses from persons suspected of committing criminal offenses on government property under the control of DPS will be held for five (5) years and then destroyed.

Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises to include reports of traffic accidents, traffic violation notices and similar papers under DPS control will be held for one (1) year and then destroyed.

Destruction of paper records is by shredding or burning.

Magnetic tape files will be retained for fifteen years and then erased.

SYSTEM MANAGER AND ADDRESS:

Washington Headquarters Services (Real Estate and Facilities), ATTN: Defense Protective Service, Room 3C345, The Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Washington Headquarters Services (Real Estate and Facilities), ATTN: Defense Protective Service, Room 3C345, The Pentagon, Washington, DC 20301-1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Washington Headquarters Services (Real Estate and Facilities), ATTN: Defense Protective Service, Room 3C345, The Pentagon, Washington, DC 20301-1155.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigators, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to DPS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable. The criminal investigation casefile and contingency planning and analysis file may be partially or totally subject to the general exemption.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR 286b.7. For additional information contact the system manager.

[FR Doc. 90 11265 Filed 5-14-90]

BILLING CODE 3810-01

Department of the Army**Closed Meeting; Army Science Board**

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

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: June 5, 1990.

Time: 1300-1500.

Place: Pentagon.

AGENDA: The Army Science Board Ad Hoc Subgroup on Software in the Army will meet to resolve the findings of the panel and determine the course of action. During the two-hour Executive Session, General Officers from affected organizations will address the findings. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 90-11189 Filed 5-14-90; 8:45 am]

BILLING CODE 3710-8-M

Closed Meeting; Army Science Board

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

Name of the committee: Army Science Board (ASB).

Dates of meeting: 5-7 June 1990.

Time: 0830-1630

Place: Key West, Florida.

Agenda: The Army Science Board (ASB) 1990 Summer Study on the Use of Army Systems and Technologies in the National War on Drugs will meet for discussions

concerning current/past/future operations and begin preparations of the report format and recommendations. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 90-11223 Filed 5-14-90; 8:45 am]
BILLING CODE 3710-8-M

Closed Meeting; Army Science Board

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

Name of the committee: Army Science Board (ASB).

Date of meeting: 7 June 1990.

Time: 0800-1700.

Place: Maxwell Laboratories, San Diego, CA; Green Farm Test Site, San Diego CA

Agenda: The Army Science Board (ASB) Ad Hoc Subgroup Electromagnetic and Electrothermal Technologies will meet at Maxwell Laboratories. They are developing capacitors under the Mile Run Program, which is a Limited Dissemination (LIM-DIS) Program. Only those areas which are Non-LIM DIS will be discussed. The afternoon will be spent at the DNA Green Farm Test Facility. This meeting will be closed to the public in accordance with section 552(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5 U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-0781/0782.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 90-11222 Filed 5-14-90; 8:45 am]
BILLING CODE 3710-8-M

DELAWARE RIVER BASIN COMMISSION

Commission Meetings and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 23, 1990 beginning at 1:30 p.m. in the Harrisburg Room of the Sheraton Harrisburg West at Interstate 83 and the Pennsylvania Turnpike, five miles from Harrisburg, Pennsylvania.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and will include discussions of the Upper Delaware ice jam project; amendment of Compact Section 15.1(b) to fund the F.E. Walter Reservoir project and compliance with the Commission's leak detection and repair regulation.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Holdover Project: Borough of Schuylkill Haven D-89-96 CP.* An application for withdrawal of surface water from the Upper and Lower Tumbling Run Reservoir, located on Tumbling Run, a tributary of the Schuylkill River, and for approval of two existing stand-by water supply wells (Nos. 1 and 6), all to serve the applicant's distribution system. The proposed surface water withdrawal will average 2.8 million gallons per day (mgd), an increase of 0.2 mgd over the existing withdrawal, and the intake is in the Lower Tumbling Run Reservoir. The stand-by wells will be able to supply a combined total of up to 0.22 mgd. All project withdrawals are located in North Manheim Township, Schuylkill County, Pennsylvania. This hearing continues that of March 28, 1990.

2. *Merrill Creek Owners Group D-77-110 CP (Amendment 1).* An application for approval of amendments to DRBC Docket D-77-110 CP to: (a) authorize the use of Merrill Creek releases to satisfy the Commission's drought objectives in lieu of curtailments for additional steam electric generating units not previously covered by the decision; (b) provide for credit to the Merrill Creek Owners Group should the Commission order Merrill Creek releases for certain purposes specified in the Decision; (c) provide that releases from Blue Marsh Reservoir directed by the Commission be credited to the flow in the Delaware River at Trenton, for purposes of determining when Merrill Creek releases are to be made; and (d) provide a more detailed description of the operation of the Project under the Decision. The Merrill Creek Reservoir is located on Merrill Creek, a tributary of Pohatcong Creek in Harmony Township, Warren County, New Jersey.

3. *Totten Farms D-80-5 (RENEWAL-2).* An application for the renewal of a ground water withdrawal project to supply up to 8.64 million gallons (mg)/30 days of water to the applicant's farm irrigation system. Commission approval

on August 28, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 8.64 mg/30 days. The project is located in North Hanover Township, Burlington County, New Jersey.

4. *Honey Brook Borough Authority D-85-7 CP (RENEWAL).* An application for the renewal of a ground water withdrawal project to supply up to 12.0 mg/30 days of water to the applicant's distribution system from Well Nos. 5, 6, and 7. Commission approval on May 1, 1985 was limited to five years. The applicant requests that the total withdrawal from all wells be increased from 6.8 mg/30 days to 12.0 mg/30 days. The project is located in Honey Brook Township, Chester County, Pennsylvania.

5. *Downingtown Municipal Water Authority D-89-63 CP.* A surface water withdrawal project to serve the applicant's public water supply system. A proposed new withdrawal will average 2.5 mgd from the East Branch Brandywine Creek. Also, there will be up to 1.35 mgd combined withdrawal from the Copeland Run and Beaver Creek existing intakes located in West Bradford Township and Caln Township, respectively. When a proposed water filtration plant for treatment of water withdrawn from East Branch Brandywine Creek is constructed and operational (1991), withdrawals from Beaver Creek and Copeland run will be abandoned. The total combined withdrawal from all sources will be 2.5 mgd. Copeland Run is a tributary to Beaver Creek, which is a tributary of the East Branch Brandywine Creek approximately 3,500 feet downstream of the proposed intake. The East Branch Brandywine Creek intake will be 1,000 feet south of the Route 30 bridge in Caln Township. All withdrawals are located in Chester County, Pennsylvania.

6. *Four Diamonds, Inc. D-89-78.* An application for expansion of an existing sewage treatment plant (STP) from 0.044 mgd to 0.1 mgd, and upgrade of the STP to provide advanced secondary treatment to serve the Mountain Laurel Resort development. The treated effluent will discharge to Black Creek, a tributary of the Lehigh River. The project is located in Kidder Township, Carbon County, Pennsylvania, along the south side of Route 940, about one-half mile west of the Pennsylvania Turnpike Northeast Extension.

7. *Timber Mountain Estates Inc. D-89-101.* A sewage treatment plant (STP) to serve the applicant's proposed 450-unit residential development and restaurant. The proposed STP will

provide tertiary treatment for a sewage flow of 0.125 mgd prior to discharge to the Bush Kill. The STP will be located adjacent to the Bush Kill, one mile west of Route 402, in Middle Smithfield Township, Monroe County, Pennsylvania.

8. *Clean Treatment Sewage Company D-90-28*. A sewage treatment plant (STP) project to serve the residential development of Marcel Lake Estates. The existing 0.02 mgd STP will be upgraded and expanded to provide tertiary treatment for a design flow of 0.2 mgd. Treated effluent will discharge downstream of Marcel Lake to Dingmans Creek, a tributary of the Delaware River. The project STP is located just east of Marcel Lake, on Townsend Circle Road in Delaware Township, Pike County, Pennsylvania.

9. *Coastal Eagle Point Oil Company D-90-32*. A surface water withdrawal and out-of-basin diversion project to serve the Island of Aruba in the Caribbean. Water will be withdrawn directly through ship valves at the average rate of 33 mg/30 days from the Delaware River at the Mantua Anchorage, which is located in the counties of Gloucester, New Jersey, and Philadelphia and Delaware, Pennsylvania, at River Mile 94.2.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

* * * * *

Delaware River Basin Commission Public Briefing on Delaware Estuary Use Attainability Project Proposals

The Delaware River Basin Commission will hold a public briefing on proposals to upgrade water quality standards for portions of the tidal Delaware river. The briefing will be held on June 14, 1990 from 2 to 5 p.m. at the Holiday Inn, 4th and Arch Streets, Philadelphia, Pennsylvania.

Current water quality standards for a major portion of the tidal Delaware River do not meet the fishable and swimmable water quality goals of the federal Clean Water Act. Federal regulations require that use attainability analyses be conducted for streams which have standards that do not meet these federal goals. Six considerations are mentioned in the U.S. Environmental Protection Agency (USEPA) regulations concerning the attainment of "fishable and swimmable" waters, including

whether or not upgrading of standards "... would result in substantial and widespread economic and social impact." The Delaware River Basin Commission, with the support of the states of Delaware, New Jersey, and Pennsylvania and the USEPA, has completed a use attainability assessment of the Delaware Estuary to determine whether upgraded standards consistent with the federal goals are attainable.

The study concluded that certain revisions to water quality standards should be made. Between the C & D Canal and the Burlington-Bristol Bridge current standards call for recreational quality suitable for boating and other secondary contact recreational activities, but not primary contact sports such as swimming or water skiing. The study recommended that the reaches from the C & D Canal upstream to near the Commodore Barry Bridge and from the Burlington-Bristol Bridge downstream to about a mile above the Tacony-Palmyra Bridge be upgraded for swimming and other primary contact recreational activities. The reach between the Tacony-Palmyra Bridge and near the Commodore Barry Bridge will remain classified for boating and secondary contact recreation. This reach is significantly impacted by combined sewer overflows from Philadelphia and Camden.

Between the Delaware Memorial Bridge and about a mile above the Tacony-Palmyra Bridge current standards call for water quality suitable for a minimal level of fish and other aquatic life: "maintenance of resident fish". The study recommended that this entire reach be upgraded to support the full life cycle of a balanced aquatic community, including spawning.

The public briefing will present discussions of the bases for these recommendations, including the Delaware River water quality needed and the upgraded wastewater treatment needed to achieve the required water quality levels. Other pollution abatement needs, and the procedures that will be followed to develop the program to implement the upgraded treatment, will also be discussed.

The study results and recommendations are presented in the following reports:

- Report on the Attainability of Swimmable Water Quality
- Report on the Attainability of Fishable Water Quality in the Delaware Estuary
- Attaining Fishable and Swimmable Water Quality in the Delaware Estuary: Final Report

Copies of these reports will be available at the public briefing. They may also be obtained earlier by contacting Seymour Gross at the Commission at (609) 883-9500.

It is the Commission's intent to analyze all comments received at the public briefing before proposing the adoption of specific revisions to Delaware Estuary water quality standards. Public hearings on such proposed water quality standards revisions are tentatively scheduled for early October, 1990.

Dated: May 8, 1990.

Susan M. Weisman,

Secretary

[FR Doc. 90-11272 Filed 5-14-90; 8:45 am]

BILLING CODE 6360-01-M

DEPARTMENT OF ENERGY

Intent To Prepare a Remedial Investigation/Feasibility Study— Environmental Impact Statement for the First of Five Remedial Actions at the Feed Materials Production Center Near Fernald, OH

AGENCY: Department of Energy.

ACTION: Notice of Intent to prepare a Remedial Investigation/ Feasibility Study—Environmental Impact Statement (RI/FS-EIS) for remedial action at the Feed Materials Production Center (FMPC) silos located near Fernald, Ohio. This is the first of five remedial actions to be taken at FMPC.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an RI/FS-EIS in accordance with the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) for remedial actions at the "special facilities area," i.e., Operable Unit 4, Silos 1, 2 and 3 (the silos). The RI/FS-EIS process will examine the nature, extent and environmental impacts of existing contamination associated with the silos and will evaluate alternatives for remedial action. The silos is one of five CERCLA operable units at the FMPC. A separate RI/FS-NEPA process will be conducted for each operable unit.¹ The

¹ The DOE is preparing a separate draft EIS on *Renovation and Site Evaluation* for the FMPC. A Notice of Intent was published for the EIS on August 14, 1986, and public scoping meetings were held on September 3 and 22, 1986. The proposed renovation activities will (1) improve environmental health and safety conditions and production reliability, (2) restore production to a level that will meet future material defense needs, and (3) enhance management of hazardous and radioactive waste

Continued

RI/FS-EIS for the silos will function as the lead document, in which complete discussion of common issues and cumulative impacts will be presented. The four other integrated NEPA/CERCLA documents will present impacts specific to the operable units and summarize and update the presentation of common issues and cumulative impacts in the lead RI/FS-EIS, as appropriate. In order to proceed on a timely basis with all RI/FS-NEPA documents for the FMPC, the scoping meetings conducted for the lead RI/FS-EIS will also address the scoping issues for all operable unit RI/FS-NEPA documents. Although an RI/FS-NEPA document will be prepared for each of the operable units, the level of NEPA review required for the remaining four operable units (i.e., EIS or environmental assessment) is uncertain at this time. If DOE determines that additional RI/FS-EISs are required, a Notice of Intent will be published announcing this determination and additional written RI/FS-EISs are required, a Notice of Intent will be published announcing this determination and additional written comments will be accepted. Additional NEPA scoping meetings will be conducted for other operable units if there is a substantial change in the scope of alternatives and/or public issues, or a substantial time lapse since the RI/FS-EIS scoping meetings announced in this Notice.

The purpose of this Notice of Intent (NOI) is twofold: (1) To present pertinent background information on the proposed scope and content of the RI/FS-EIS for the silos and for other RI/FS-NEPA documents at the FMPC; and (2) to solicit public input to the RI/FS-EIS process to ensure that issues are identified early and properly studied. Federal, State, and local agencies, interested organizations, and individuals desiring to submit comments or suggestions for consideration in the preparation of the RI/FS-EIS and other RI/FS-NEPA documents are invited to do so. Public scoping meetings will be held on June 12, 1990, in Ross, Ohio at 7:30 p.m. and June 13, 1990, in Cincinnati, Ohio at 7:30 p.m. Upon completion of the draft RI/FS-EIS, the availability of the document will be announced in the *Federal Register*, at which time comments from the public

materials. The EIS will also discuss alternatives to renovating FMPC, including shutting down its metal production operations, relocating production activities, and taking no action. The renovation EIS will discuss site operation and production but will not discuss remedial action activities that are the subject of this Notice of Intent.

will again be solicited. Comments received during the public comment period will be addressed in the final RI/FS-EIS. A Record of Decision is planned for August 1991.

The supplementary information sections of this NOI provide additional information on the following subjects: (1) Site background and description; (2) description of proposed actions; (3) description of alternative approaches; (4) environmental issues; (5) description of the NEPA/CERCLA process; (6) sources of background information; and (7) description of the scoping process.

DATES: Written comments or suggestions postmarked by June 22, 1990 will be considered in carrying out the integrated CERCLA/NEPA process. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Scoping meetings will be held at Ross High School, 3425 Hamilton-Cleves Road, Ross, Ohio, on June 12, 1990 at 7:30 p.m., and at Forest Park High School, 1231 West Kemper Road, Cincinnati, Ohio on June 13, 1990 at 7:30 p.m. Requests to speak at these meetings should be received by Mr. Davis at the address below by June 8, 1990. Requests to speak may also be made during registration for the meetings.

ADDRESSES: All comments or suggestions on the scope of the RI/FS-EIS and requests to speak at the scoping meetings discussed above should be addressed to: Bobby Davis, Environmental Manager, U.S. Department of Energy, P.O. Box 398705, Cincinnati, Ohio 45239-8705, ATTN: FMPC RI/FS-EIS, (513) 738-6156.

For further information on the NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW, Room 3E-080, Washington, DC 20585, (202) 586-4600.

For further information on the CERCLA process, contact: John Tseng, Director, Office of Environmental Guidance and Compliance, U.S. Department of Energy, 100 Independence Avenue, SW, Room 7A-075, Washington, D.C. 20585, (202) 586-9024.

SUPPLEMENTARY INFORMATION:

A. Background and Site Description

The FMPC is a DOE-owned manufacturing facility for the production of uranium metal used in U.S. defense programs. At the present time, production at the site has been temporarily suspended. The site is located on 1050-acres of property in a rural area about 20 miles northwest of

downtown Cincinnati, Ohio. The production facilities occupy approximately 136 acres near the center of the site. Most of the site, including all of the production and waste management facilities, is located within Hamilton County, Ohio, with the exception of about 200 acres located in southern Butler County, Ohio. The villages of Fernald, New Baltimore, Ross, and Shandon are located within a few miles of the FMPC.

As a result of the activities conducted at the FMPC, both radioactive and non-radioactive wastes are generated. Up to 1984, solid and slurried wastes at the FMPC were disposed of in on-site pits and silos. Although such wastes are currently drummed and stored for on-site or off-site disposal, the pits and silos remain a potential source for the release of radionuclides and chemicals into the environment. Surface water runoff from the covered pits and other affected areas within the western portion of the FMPC enters Paddy's Run, a tributary of the Great Miami River. Paddy's Run originates just north of the FMPC and flows south-southeast along the western edge of the site, and for a part of the year it is a dry stream bed with occasional rainfall-induced flows. Natural drainage from the eastern portion of the site is toward the Great Miami River, which is located about 0.75 miles to the east of the site.

Leachate from the waste pits can potentially migrate vertically to the Great Miami Buried Valley Aquifer which underlies the site. This aquifer serves as a principal source of domestic, municipal, and industrial water throughout the region. A portion of the flow in Paddy's Run is also known to enter this aquifer downstream from the waste pits as a result of seepage through the stream bottom.

Liquid waste effluent generated from FMPC process operations is sent to a general plant sump for treatment and analysis prior to release to the Great Miami River through a permitted outfall ditch. Storm water runoff from the production area is collected and allowed to settle in stormwater retention basins prior to being analyzed and released to the Great Miami River through the same effluent line. During major storm events, storm water may be discharged through an outfall ditch to Paddy's Run if the storm water retention basins overflow.

Airborne releases of slightly radioactive particulates generated by manufacturing processes at the FMPC are controlled by bag-type dust collectors. However, periodic dust collector failures and general plant operations have resulted in releases of

uranium and other radionuclides to the atmosphere since 1952. These airborne releases were the principal pathway of particulate movement to off-site areas. Radon gas from two concrete silos containing radium-bearing wastes can also reach off-site populations. A radon monitoring system and an internal air filter removal system have been installed for worker protection. A removal action for the silos is also being evaluated through preparation of an Engineering Evaluation/Cost Analysis document under CERCLA.

Several residences and small industries are located within the potentially affected zones. The major economic activities in the area are farming and dairy operations. Major farm crops include sweet corn, field corn, soybeans, wheat, and garden produce sold at local and nearby urban markets. The vegetative cover of the site area includes cropland, grasslands, and deciduous forests.

In July 1986, a Federal Facility Compliance Agreement (FFCA) was jointly signed by the DOE and the U.S. Environmental Protection Agency (USEPA) that included provisions related to environmental cleanup activities associated with the FMPC. The FFCA was entered into pursuant to Executive Order 12088 to ensure that environmental impacts associated with past and present activities at the FMPC are thoroughly and adequately investigated so that appropriate remedial response actions can be formulated, assessed, and implemented.

Since that time, DOE and the U.S. EPA have negotiated another agreement, a CERCLA 120 and 106 Consent Agreement. The Consent Agreement will become effective after the Department of Justice concurs and public comments on the agreement have been considered. The Consent Agreement will account for recent changes in regulatory status (i.e., listing of FMPC on EPA's National Priority List) and responsibilities, reflect new EPA authorities under the 1986 CERCLA amendments, include "model" provisions agreed to by EPA and DOE for inclusion in Federal Facility Agreements such as this one, and provide a timetable for actions. The new agreement also will reflect changes in the overall remediation approach at the FMPC, including the use of operable units and the intent to implement several removal actions. The removal actions are being planned for:

- (1) Contaminated water under FMPC buildings, (2) waste pit run-off control, (3) south plume groundwater contamination, and (4) the K-65 silos (i.e., silos 1 and 2).

B. Proposed Actions

Within the CERCLA framework, the purpose of the Remedial Investigation is to determine the nature and extent of any release, or threat thereof, of hazardous or radioactive substances, pollutants, or contaminants, and to gather all necessary data to support the Feasibility Study. The purpose of the Feasibility Study is to develop and evaluate remedial action alternatives to protect human health and the environment from releases or threatened releases of hazardous or radioactive substances, pollutants, or contaminants at or from the FMPC.

To expedite remediations, the site has been divided into five operable units that comprise the total scope of the remedial action program. Operable units are distinctive groupings of facilities and environmental media that will enable DOE to expedite remedial actions on the highest priority operable units while awaiting necessary data and related analysis on other operable units. These operable units are: (1) Waste Storage Area; (2) Solid Waste Areas; (3) Production Facilities and Suspect Areas; (4) Special Facilities (Silos); and (5) Environmental Media. NEPA review requirements will be incorporated into the RI/FS documentation for each operable unit.

C. Preliminary Identification of Alternatives for Remedial Action at the Silos

The silos include the K-65 Silos (silos 1 and 2) and the Metal Oxide Silo (silo 3) located south of the waste pit area in the northwestern portion of the FMPC. Another FMPC silo (i.e., silo 4) was never used and will not be investigated under the RI/FS.

The silos are domed and measure 80 feet in diameter, 36 feet high to the center of the silo dome and 27 feet to the top of the vertical walls. The walls are 8 inch thick concrete as are the outer part of the domes, which taper to 4 inches at the center. The K-65 silos are surrounded by an earthen berm to a level of approximately 26 feet while the Metal Oxide silo is free-standing. The K-65 silos are used for the storage of radium-bearing residues formed as byproducts of uranium ore processing. They received waste residues from 1952 to 1958. Waste raffinates were pumped into the silos where the solids settled; the liquids were removed and treated.

The primary radioactive constituents of silos 1 and 2 are radium (Ra-226), radon (Rn-222), uranium (0.71% of which is U-235) and a presently undetermined amount of thorium (Th-230). The

majority of the waste material is silica and metallic compounds.

Radon is known to be diffusing out of the silos. A removal action for silos 1 and 2 is being planned. There is no evidence thus far that any of the other contaminants have migrated to surface or groundwaters. Due to the diffusion of radon through the silo walls and into the berms it is believed that the berms and subsoils are contaminated with lead (Pb-210, which is radioactive, and Pb-206, which is stable), the final product of the decay of radon. There also may be leachate transport through the existing leachate collection system beneath the silos. Sampling of the berms and soil beneath the silos is scheduled and upon completion will provide a much clearer picture of the nature and extent of contaminant migration, if any.

Silo 3 contains uranium (0.71% U-235), radium (Ra-226), an undetermined amount of thorium (Th-230), silica and other metal oxides. Silo 3 is not a significant radon source and due to the physical characteristics of the wastes (dry and powdery), it is not believed that any contaminant migration has occurred.

The remedial action alternatives to be considered will include, but are not limited to:

- No Action;
- In-Place Isolation of Waste from the Environment;
- In-Place Stabilization of Waste;
- Waste Removal, Stabilization, On-Site Disposal;
- Waste Removal, Separation of Waste Components, On-Site Disposal by Component;
- Waste Removal, Stabilization, Off-Site Disposal; and
- Waste Removal, Separation of Waste Components, Off-Site Disposal by Component.

Project-specific technologies pertaining to the strategies above will also be presented in the RI/FS-EIS. The affected environment on and adjacent to the FMPC site will be characterized, including: geography, meteorology and climatology, geology and seismology, groundwater resources, surface water resources, ecology, radiation, and hazardous chemicals.

D. Other Remedial Actions

Operable Unit I, Waste Storage Areas, includes six waste pits, the burn pit, and the Clearwell, located in the northwestern portion of the FMPC. The waste pits are no longer in use. Waste Pits 1, 2, 4, and 6 were mostly used for disposal of dry radioactive waste. The estimated volume of these four waste pits is 112,000 cubic yards. Waste pits 3

and 5 were used for treatment of liquid wastes and contain uranium, thorium, and other constituents; the estimated volume is 329,500 cubic yards. The burn pit was used to burn waste materials, including pyrophoric and reactive chemicals, oils, and other combustible low-level radioactive material. Use of the burn pit was discontinued in 1986. The Clearwell was used as a collection and settling basin for liquid overflow from Pit 5 and for runoff from the waste storage area; since shutdown of the process flow to Pit 5 in early 1987, use of the Clearwell has been limited to collecting surface storm water runoff from the waste pit area.

The intent of the proposed remedial action is to stabilize, isolate or treat the waste and any associated cover materials to prevent the release or migration of contaminants to the environment. The remedial action alternatives to be considered will include, but are not limited to:

- No Action;
- In-Place Isolation of Waste from the Environment;
- In-Place Stabilization of Waste;
- Waste Removal, Treatment/Stabilization and On-Site Disposal; and
- Waste Removal, Treatment/Stabilization and Off-Site Disposal.

Operable Unit 2, Solid Waste Units, includes the north and south lime sludge ponds, active fly ash pile, abandoned fly ash pile and southfield area, and sanitary landfill. The lime sludge ponds, located in the waste storage area, are settling/drying beds for alkaline sludges produced from the treatment of the raw water supply to FMPC. The ponds encompass an area of approximately two acres; the sludge volume is estimated at 11,500 cubic yards for each pond. The fly ash piles contain fly ash from the on-site coal-fired boiler plant and are located southwest of the Production Area. In the past, the abandoned fly ash pile was sprayed with oils (contaminated with uranium) to control dust. Approximately 1,000 kg of uranium is estimated to have been present in these waste oils. The southfield area, located at the northern edge of the abandoned fly ash pile, was used to dispose of uranium-contaminated construction rubble. The fly ash piles and the southfield area encompass an estimated 16 acres. The sanitary landfill is located northeast of the waste storage area and served as the disposal area for waste paper, rags, and other types of solid sanitary wastes from the production facilities. The waste volume is approximately 16,000 to 18,000 cubic yards.

The RI/FS will focus on a one acre portion of the landfill where waste has

been deposited. It is intended that the solid waste units that represent a potential source of contamination to the environment be part of a remedial action. The solid waste units are distinguished by the presence of large volumes of solid waste materials that were mixed only with small amounts of chemical and radioactive wastes during the years of operation. The remedial action alternatives to be considered will include, but are not limited to:

- No Action;
- In-Place Isolation of Waste from the Environment;
- In-Place Stabilization of Waste;
- Waste Removal, Volume Reduction, On-Site Disposal; and
- Waste Removal, Volume Reduction, Off-Site Disposal.

Operable Unit 3, Facilities and Suspect Areas, includes specific areas within the production area that will be identified as the remedial investigation proceeds. These areas represent past, current, or future sources of radionuclide or chemical releases to the environment. The Operable Unit also includes additional suspect areas outside of the production area: e.g., a fire training area; an incinerator area (east of the production area); K-65 slurry line trench; several rubble mounds, and scrap metal piles. A wide variety of remedial actions are being considered for the numerous elements of this operable unit: groundwater collection and treatment or disposal; soil capping or removal and disposal; liquid waste containment, or removal and disposal; repair and upgrade of facilities; and replacement or removal with disposal.

Operable Unit 5, Environmental Media, includes environmental pathways and/or environmental receptors presently or potentially affected by the release of radionuclides or chemicals from the FMPC: all surface soils; Great Miami Buried Valley Aquifer; Great Miami River; Paddy's Run; storm water outfall ditch; flora and fauna; and ambient air. A wide variety of alternatives are being evaluated for each potentially affected area. The alternatives to be considered will include but are not limited to:

- No Action;
- Groundwater Pumping and Reinjection for Pathway Control;
- Groundwater Pumping with Direct Discharge to Surface Waters;
- Groundwater Pumping With Treatment Prior to Discharge;
- Groundwater Use Restrictions;
- Groundwater Alternate Water Supply;
- Groundwater Use Restrictions With Treatment at User Location;
- Soil/Sediment Stabilization;
- Soil/Sediment Capping;

- Soil/Sediment Removal and Disposal; and
- Flora/Fauna Removal and Disposal.

E. Preliminary List of Potential Environmental Issues

There are a number of potential issues related to the proposed remedial actions at the FMPC. Some deal with potential environmental impacts, including cumulative impacts, whereas others are factors that may include or be influenced by implementation of one or more of the alternatives. Potential major issues that may require analysis in the RI/FS-EIS are listed below. This list is based on DOE experience with major issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to focus on the significant issues to be analyzed in depth in the RI/FS-EIS and to eliminate from detailed study the issues that are not significant.

1. Potential radiological issues and health risks:

- Related to human exposure, including exposure to workers and the public, individuals and the total population, children and adults, present and future generations;
- Along transportation routes and near other sites included in the alternatives;
- Associated with various pathways to individuals, including surface waters and groundwater, soils and sediments, flora and fauna (including crops and livestock), and gases, dust, and particulates;
- Associated with both routine operations and accidents;
- Associated with human intrusion into the contaminated materials; and
- Due to natural forces such as erosion and flooding.

2. Potential socioeconomic impacts:

- Associated with land uses;
- Related to local transportation systems; and
- Related to economic activities near the site.

3. Potential institutional issues:

- Project-specific criteria for decontamination, effluent concentrations, and release of the site or portions thereof for unrestricted or restricted uses;
- Future institutional controls for monitoring and maintenance;
- Institutional issues related to the implementation of alternatives; and
- Siting of any necessary treatment or disposal facilities.

4. Potential engineering and technical issues:

- The most reasonable engineering options for each type of waste/residue;
- Probable duration of waste isolation or stabilization; and

• Rates and magnitude of loss of containment.

5. Potential ecological issues:

- Related to terrestrial and aquatic habitats;
- Related to chemical contamination, as well as radiological impacts;
- Related to wetlands;
- Effects on the regional aquifer; and
- Related to site-specific hydrology.

6. Issues related to the CERCLA criteria for selection of a remedial action:

- Compliance with Applicable or Relevant and Appropriate Requirements (ARAR);
- Protection of human health and the environment;
- Short-term effectiveness;
- Long-term effectiveness and performance;
- Reduction of toxicity, mobility, and volume;
- Implementability;
- Cost;
- State acceptance; and
- Community acceptance.

F. NEPA/CERCLA Integration

The RI/FS-EIS process will examine the nature, extent, and environmental impacts of existing contamination associated with the silos and will evaluate alternatives for remedial action. The silos area is one of five CERCLA operable units at the FMPC. A separate RI/FS-NEPA process will be conducted for each operable unit. The RI/FS-EIS for the silos will function as the lead document, in which complete discussion of common issues and cumulative impacts will be presented. The four other integrated NEPA/CERCLA documents will present impacts specific to the operable units and summarize and update the presentation of common issues and cumulative impacts in the lead RI/FS-EIS, as appropriate. Although an RI/FS-NEPA document will be prepared for each of the operable units, the level of NEPA review required for the other four operable units (i.e., EIS or environmental assessment) is uncertain at this time. If DOE determines that additional RI/FS-EISs are required, a Notice of Intent will be published announcing this determination and allowing for any additional written comments.

The draft RI/FS-NEPA documents for all five operable units will be prepared within a 10-month period. In order to proceed on a timely basis with all RI/FS-NEPA documents for the FMPC, the scoping meetings conducted for the lead RI/FS-EIS will also address the scoping issues for all operable unit RI/FS-NEPA documents. Additional NEPA scoping meetings will be conducted for

subsequent operable units if there is a substantial change in the scope of alternatives and/or public issues, or a substantial time lapse since the RI/FS-EIS scoping meeting announced in this Notice. As the remedial investigation and feasibility study process proceeds, it is possible that site characterization may be completed earlier on an operable unit other than Operable Unit 4. If this occurs, the earlier RI/FS-NEPA document for that other operable unit will become the lead document.

According to the current schedule, DOE expects to issue a draft RI/FS-EIS for the silos in November, 1990, for a 45-day public comment period. At that time, there will be a public hearing for oral and written comments to be recorded. In mid-1991, DOE expects to issue the final RI/FS-EIS, which will include public comments and DOE responses followed by a Record of Decision in August 1991.

The following dates are planned for the other operable units:²

Operable Unit 1—Draft RI/FS-NEPA (February, 1991) Record of Decision (December, 1991)

Operable Unit 2—Draft RI/FS-NEPA (March, 1991) Record of Decision (December, 1991)

Operable Unit 3—Draft RI/FS-NEPA (May, 1991) Record of Decision (March, 1992)

Operable Unit 5—Draft RI/FS-NEPA (June, 1991) Record of Decision (March, 1992)

Public participation in the environmental review and analysis process is encouraged. As described in the Community Relations Plan for the RI/FS at the FMPC, public information meetings will be held in support of the CERCLA/NEPA program when significant new phases of the work are planned, when important new information becomes available, or when community interest warrants a meeting. Public meetings will be held on a quarterly basis or as appropriate. Fact sheets, technical reports, and other information relating to DOE activities will be placed in the FMPC, Hamilton, Harrison, and Cincinnati libraries at the addresses noted below.

G. Related Documentation

Further information on the FMPC site and the remedial actions program is available in the public reading rooms listed below. The available documents include:

1. FMPC Environmental Monitoring Annual Report, Westinghouse Materials Company of Ohio;

² The Remedial Investigation (RI) report for each of the five operable units will be completed and available for public information prior to the completion and availability of the Feasibility Study (FS) report for each operable unit.

2. Work Plan for all Remedial Investigation/Feasibility Study Activities:
Volume 1—Sampling Plan,
Volume 2—Health and Safety Plan,
Volume 3—Community Relations Plan, and
Volume 4—Data Management Plan;
Advanced Sciences, Inc., March 1, 1988.
3. Remedial Investigation/Feasibility Study:
Work Plan Task I Report—Description of
Current Situation Advanced Sciences,
Inc., January 31, 1987; and
4. Other RI/FS documents listed in the FMPC
Administrative Record Index.

These documents and the entire administrative record for the RI/FS are available during normal business hours at the following locations: (1) FMPC Administration Building, 7400 Willey Road, Ross, Ohio 45030; (2) Lane Public Library, North Third and Buckeye Streets, Hamilton, Ohio 45011.

H. Scoping Process

The scoping process will involve all interested agencies (Federal, state, and local), groups, and members of the public. Comments are invited on the alternatives and the issues to be considered in the integrated CERCLA/NEPA process for the Feed Materials Production Center. Public scoping meetings are scheduled at 7:30 p.m. to be held on June 12, 1990, in Ross, Ohio and on June 13, 1990, in Cincinnati, Ohio (at the addresses given under Dates above).

A presiding officer will conduct these informal meetings under the following procedures. Oral statements and written statements will be recorded and become part of the public record. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted for each speaker and speakers are encouraged to summarize written comments. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meetings; they will be called on to present their comments if time permits. Written comments will also be accepted at the meetings.

Both oral and written scoping comments will be considered and will be given equal weight. A transcript of the scoping meetings will be retained by DOE and made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, during business hours, Monday through Friday. Copies of the scoping meetings transcripts and other CERCLA/NEPA documents and

major references used in the preparation of these documents will be made available during normal business hours at the locations noted in the previous section. A notice of locations of availability will be published in the **Federal Register** at the time of announcement of availability of the draft RI/FS-EIS.

Those interested parties who do not wish to submit comments or suggestions during the scoping period, but who would like to receive a copy of the draft RI/FS-EIS for review and comment, should notify Mr. Bobby Davis at the address given above in the Address section.

Dated in Washington, DC this 7 day of May, 1990.

Peter N. Brush

Acting Assistant Secretary Environment, Safety, Health.

[FR Doc. 90-11280 Filed 5-14-90; 8:45 am]

BILLING CODE 6450-01-M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meeting

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, May 22, 1990, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 9:30 a.m. This meeting is being held to allow members of the IAB to participate in a working group of the IEA's Standing Group on Emergency Questions (SEQ), which is considering the IEA's Questionnaire A/Questionnaire B (QA/QB) reporting instructions. The agenda for the meeting, which is under the control of the IEA Secretariat, is expected to be as follows:

1. Approval of the Summary Record of 2nd Meeting.
2. Second forward month trade reporting.
3. Trade origins and destinations used in the QA/QB.
4. Stock reporting by categories.
5. Facilitating reporting by electronic means.
6. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meeting is open only to representatives of members of the IAB, their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, State, the Federal Trade Commission,

and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, May 10, 1990.

Stephen A. Wakefield,
General Counsel.

[FR Doc. 90-11352 Filed 5-14-90; 8:45 am]

BILLING CODE 6450-01-M

Morgantown Energy Technology Center Grant; Financial Assistance Award to the Regents of the University of Colorado

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

ACTION: Notice of acceptance of an unsolicited financial assistance application for grant award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36-month grant to The Regents of the University of Colorado, Campus Box 19, Boulder, CO 80309-0019, in the amount of approximately \$498,000.

FOR FURTHER INFORMATION CONTACT: Beverly J. Harness, I-07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4089, Procurement Request No. 21-90MC27115.

SUPPLEMENTARY INFORMATION: The pending award is based on an unsolicited application for a research project to develop an economical process to convert natural gas to higher value hydrocarbons utilizing catalytic technologies. This proposal is to investigate a unique method of conversion by developing a combined catalyst reactor/membrane separator. By developing a system where both conversion selectivity and byproduct separation can be accomplished at the same time, it is estimated that considerable costs can be saved. This would provide new market areas for natural gas and would provide the means for transporting costly natural gas to the market at acceptable costs. DOE support of the proposed activity would enhance the benefits to be derived and DOE knows of no other entity which is studying the proposed research.

In view of the well-equipped laboratories and the expertise of the personnel at the University of Colorado to be allocated to this research project,

it has been determined that it is appropriate to award this grant to the University of Colorado on an unsolicited basis.

Dated: May 4, 1990.

Louie L. Calaway,

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

[FR Doc. 90-11281 Filed 5-14-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-168-003]

ANR Storage Co.; Notice of Proposed Changes in FERC Gas Tariff

May 8, 1990.

Take notice that ANR Storage Company ("ANR Storage") on May 3, 1990, tendered for filing as part of its FERC Gas Tariff certain revised tariff sheets. ANR Storage states that these tariff sheets are designed to implement the terms of the Stipulation and Agreement in the captioned proceeding, which Stipulation and Agreement was approved by a letter Order of the Commission dated April 2, 1990. ANR Storage requests an effective date of June 1, 1990, for the tariff sheets it has submitted.

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 rules 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 15, 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 who 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. 90-11213 Filed 5-14-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA89-23-000]

Oklahoma Gas & Electric Co.; Filing

May 7, 1990.

Take notice that on May 2, 1990, Oklahoma Gas & Electric Company tendered for filing its refund report

pursuant to the Commission's Letter Order dated February 16, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 21, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-11104 Filed 5-14-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3777-1]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has amended its emission standards and test procedures to establish new hydrocarbon (HC) and carbon monoxide (CO) exhaust emission standards and durability requirements for passenger cars and light duty trucks. California has requested that EPA grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for June 4, 1990 to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to presenting written comments, must notify EPA by May 25, 1990. If no party informs EPA that it wishes to testify, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA will hold a public hearing on June 4, 1990, beginning at 9 a.m., if any party notifies EPA by May 25, 1990 that it wishes to present oral testimony regarding CARB's request. Any party may submit written comments regarding CARB's request by July 5, 1990.

Any person who plans to attend the hearing should call either Robert M. Doyle, (202) 475-8656, or Andy Brooks, (202) 382-2491, EPA Manufacturers Operations Division, within 10 days of the tentative hearing date of June 4, 1990 to determine if a request for a hearing has been received by the Agency and, thus, whether a hearing will occur.

ADDRESSES: EPA will hold the public hearing announced in this notice at: State Personnel Board Building, 801 Capitol Mall, Sacramento, California 95814. Parties wishing to present oral testimony at the public hearing should notify in writing: Charles N. Freed, Director, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request in duplicate to Mr. Freed at the address above. Copies of material relevant to the waiver request (Docket A-90-11) will be available for public inspection during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m. Monday through Friday, at: U.S. Environmental Protection Agency, Air Docket (LE-131), Room M1500, First Floor Waterside Mall, 401 M Street SW., Washington, DC 20460 (Telephone (202) 382-7548).

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 475-8656, or Andy Brooks, Chief, Recall Branch, Manufacturers Operations Division (EN-340F), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone: (202) 382-2491.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act as amended, 42 U.S.C. 7543(a), provides in part: "No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class vehicles without the necessity of receiving a further waiver of Federal preemption.

By letter dated April 23, 1990, CARB submitted to EPA a request for waiver of Federal preemption for certain amendments to "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles." These amendments, which apply to passenger cars and light duty trucks,:

1. adopt new, more stringent HC and CO exhaust emissions standards to be phased in over a three-year period beginning in model year 1993;

2. Extend the durability requirement for certification and in-use compliance from 50,000 miles to 100,000 miles, also to be phased in over a three-year period beginning in model year 1993.¹

3. require manufacturers to use durability data from California or "50-state" configuration vehicles for California certification; manufacturers may request a waiver of the requirement for California configuration durability vehicles if their Federal durability data

¹ During the first two years under the new standards, manufacturers would be permitted to comply with less stringent in-use standards and in-use compliance would be waived after 50,000 miles. Thereafter, in-use compliance would be limited to 75,000 miles.

To correspond with this, CARB has amended the definition of "useful life" in the "California In-Use Vehicle Emissions-Related Recall Procedures For 1982 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, Heavy-Duty Vehicles, And Motorcycles." The useful life for all passenger cars and light duty trucks certified to the new standards "shall be ten years or 100,000 miles, whichever first occurs."

comes from a vehicle with an emission control system configuration similar to the California vehicle;

4. reduce by 50% the percentage of available credits manufacturers may use in the AB 965 program.²

California has stated in its April 23, 1990 letter that it has determined that its amended standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards and that this determination is not arbitrary or capricious. Further, California states that it continues to need its standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are not inconsistent with section 202(a) of the Act, since the procedures are technologically feasible given the available lead time and they do not impose certification requirements such that manufacturers would be unable to meet the two sets of requirements with the same test vehicle.

California's request will be considered according to the requirements for a full waiver determination, and therefore, an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file ten (10) copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the Director's address listed above not

later than May 25, 1990. In addition, the party should submit 25 copies, if feasible, of the planned statement to the Presiding Officer at the time of the hearing.

Because a public hearing is designed to give interested parties an opportunity to participate in this proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statement of any witness.

Whether or not EPA holds a hearing, the record will remain open until July 5, 1990 for the submission of written information for consideration by the Administrator in formulating his waiver decision. If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. The Administrator will base his determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and other pertinent information. This information will be available for public inspection at the EPA Air Docket.

Dated: May 7, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR 9-11285 Filed 5-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3777-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: 1990 National Census of Pulp, Paper and Paperboard Manufacturing Facilities (ICR #1459.01).

Abstract: EPA is surveying all pulp, paper and paperboard manufacturers. EPA will send the 600 respondents a questionnaire made up of questions on plant operations, and wastewater generation and treatment. The questionnaire also asks for financial data. The information will be used to support the development of effluent limitation and pretreatment regulations.

Burden Statement: The reporting burden for respondents to this census is estimated to average 180 hours per mill. This includes time for reading instructions, gathering, compiling and reviewing needed information; for completing the questionnaire; and for supervisory review and certification.

Respondents: Businesses engaged in manufacturing pulp, paper, or paperboard. Standard Industrial Classification (SIC) nos. 2611, 2621, and 2631.

Estimated No. of Respondents: 600.

Estimated Total Annual Burden on Respondents: 108,000 hours.

Frequency of Collection: One time.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Dated: May 8, 1990.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 90-11284 Filed 5-14-90; 8:45 am]

BILLING CODE 6560-50-M

[SWH-FRL-3777-3]

Hazardous Waste Management System; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final decision to grant a site specific treatability variance for land disposal of debris and certain non-debris materials from the dismantlement at the allied-signal Inc. baltimore works.

SUMMARY: EPA is today granting a site-specific treatability variance for land

² Under the AB 965 program, manufacturers may accumulate credits by certifying vehicles below the applicable California standards and then withdraw some accumulated credits in order to sell in California some federally-certified vehicles which are unable to be certified to California standards. The program was developed to improve model availability in California.

disposal of chromium-contaminated (D007) hazardous debris and certain non-debris materials that cannot be treated to comply with the requirements in the Rule on Land Disposal Restrictions (LDRs) for Third Third Scheduled Wastes (Third Third LDR). These wastes are being generated by Allied-Signal Inc. as a result of the dismantlement of its Baltimore Works under a Resource Conservation and Recovery Act (RCRA) Consent Decree entered into by Allied, EPA and the Maryland Department of the Environment for corrective action at the site. Allied filed a petition for a site-specific variance on February 14, 1990. EPA issued a tentative decision to grant the variance on April 17, 1990.

This variance is granted pursuant to the authority of the Resource Conservation and Recovery Act Sections 3004(d)-(g), and (m), and in accordance with the rules governing a site-specific variance at 40 CFR 268.44(h)-(1).

DATES: This action is effective on the day of signature.

ADDRESSES: The public may review copies of this and related background documents in the EPA RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Refer to Docket Number F-90-VASF-FFFFF on your request for information on this action. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost \$0.20 per page.

Copies of the approved variance are also available in the EPA Region III office and the Maryland Department of the Environment at the addresses given below:

U.S. EPA Region III, 841 Chestnut Street, Philadelphia, PA 19107.
Maryland Department of the Environment, 500 Broening Highway, Baltimore, MD 21224.

FOR FURTHER INFORMATION CONTACT: For general information about this variance, contact the RCRA Hotline, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area.

Dated: May 8, 1990.

Mary A. Gade,

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

[FR Doc. 90-11286 Filed 5-14-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3777-2]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection E.I. du Pont de Nemours & Co., Inc., Victoria, 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 E.I. du Pont de Nemours & Co., Inc., for the Class I injection wells located at Victoria, 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 E.I. du Pont de Nemours & Co., Inc., of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Victoria, 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 15, 1990. A public hearing was held March 19, 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 May 4, 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. 90-11286 Filed 5-14-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Baldridge Shelton Partnership et al.

1. The Commission has before it the following groups of mutually exclusive applications for 14 new FM stations:

I.

Applicant, city and state	File No.	MM docket No.
A. Baldridge Shelton, Partnership; Kankakee, IL.	BPH-880419MB	90-155
B. Andrew Perry Adsit; Kankakee, IL.	BPH-880421MY	.....
C. Webster Broadcasting, Inc.; Kankakee, IL.	BPH-880421NE	.....
D. Kankakee Broadcasting Limited Partnership applicant; Kankakee, IL.	BPH-880421NT	.....

Issue Heading and Applicants

1. Financial, C
2. Air Hazard, B
3. Comparative, A-D
4. Ultimate, A-D

II.

Applicant, city and state	File No.	MM docket No.
A. The Servant Management Group, Inc.; Camas, WA.	BPH-880309MC	90-160
B. KMAS Broadcasting Corporation; Camas, WA.	BPH-880310MB	.....
C. Camas Broadcasting Company; Camas, WA.	BPH-880310NB	.....
D. Linda C. and William H. Battles, Jr.; Camas, WA.	BPH-880310NC	.....
E. Robin Tomkins; Camas, WA.	BPH-880310NN	.....

Issue Heading and Applicants

1. Environmental Impact, E
2. Air Hazard, C, D
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

III.

Applicant, city and state	File No.	MM docket No.
A. Karen Marie Voyles; Cedar Key, FL.	BPH-881115MD	90-147
B. Bay Media, Inc.; Cedar Key, FL.	BPH-881115MI	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

IV.

Applicant, city and state	File No.	MM docket No.
A. Starr/Mura Broadcasting; Webster, MA.	BPH-871113MA	90-151
B. WBAS, Inc.; Webster, MA.	BPH-871113MB	
C. Okun Broadcasting Corporation; Webster, MA.	BPH-871113MC	
D. Levery Broadcasting Corporation; Webster, MA.	BPH-871113MF	
E. Webster FM Radio Limited Partnership; Webster, MA.	BPH-871113MH	
F. George M. Ragsdale et al., d/b/a Mid-Atlantic Broadcasting Company; Webster, MA.	BPH-871113MJ	

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, A, B, C, D, E, F
3. Ultimate, A, B, C, D, E, F

V.

Applicant, city and state	File No.	MM docket No.
A. James Pollot et al., d/b/a Pollot Communications, Ltd.; Palmyra, NY.	BPH-880217MU	90-146
B. Palmyra Broadcasting Corporation; Palmyra, NY.	BPH-880217NH	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

VI.

Applicant, city and state	File No.	MM docket No.
A. Davies E. Bahr; Boalsburg, PA.	BPH-880219MA	90-159

Applicant, city and state	File No.	MM docket No.
B. Nittany Valley Broadcasters, Ltd.; Boalsburg, PA.	BPH-880219MG	
C. Buddy Roy Kincer d/b/a, BBK Broadcasting Company; Boalsburg, PA.	BPH-880219MP	
D. Claravista, Inc.; Boalsburg, PA.	BPH-880219MQ	
E. Baseline, Incorporated; Boalsburg, PA.	BPED-880219MU	

Issue Heading and Applicants

1. Air hazard, C, D, E
1. Comparative, A, B, C, D, E
2. Ultimate, A, B, C, D, E

VII.

Applicant, city and state	File No.	MM docket No.
A. He's Alive, Incorporated; Oliver, PA.	BPED-880616MO	90-158
B. James J. Humes, d/b/a Humes Broadcasters; Oliver, PA.	BPH-880616MT	
C. Tom Clark, Jr., and John Sebeck I/a TJ Broadcasting; Oliver, PA.	BPH-880616NA	
D. Mt. Vernon Broadcasting, Inc.; Oliver, PA.	BPH-880616NC	

Issue Heading and Applicants

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

VIII.

Applicant, city and state	File No.	MM docket No.
A. Brenda Chandler; St. Joseph, TN.	BPH-880706MD	90-157
B. Mary G. Dunnavant; St. Joseph, TN.	BPH-880707ME	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

IX.

Applicant, city and state	File No.	MM docket No.
A. John E. Morris and Lawrence B. Baker, d/b/a Morbak Communications; Ada, OH.	BPH-880615MG	90-142

Applicant, city and state	File No.	MM docket No.
B. Ohio Northern University; Ada, OH.	BPED880616ML	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

X.

Applicant, city and state	File No.	MM docket No.
A. Lee County Broadcasting Co., Inc.; Bishopville, SC.	BPH-880519MG	90-141
B. JKRC Central Communications Limited Partnership; Bishopville, SC.	BPH-880519ND	

Issue Heading and Applicants

1. Environmental, A
2. Comparative, A, B
3. Ultimate, A, B

XI.

Applicant, city and state	File No.	MM docket No.
A. Illinois Valley Broadcasting Corporation; Spring Valley, IL.	BPH-880505ME	90-143
B. Illinois Valley Radio; Spring Valley, IL.	BPH-880505MQ	

Issue Heading and Applicants

1. Financial, A
2. Comparative, Both applicants
3. Ultimate, Both applicants

XII.

Applicant, city and state	File No.	MM docket No.
A. Augusta Radio Fellowship Institute, Inc., dba Carolina Radio Fellowship; St. Matthews, SC.	BPED-880301MD	90-156
B. Radio Four Broadcasting, Inc.; St. Matthews, SC.	BPH-880301MW	

Issue Heading and Applicants

1. (See Appendix), A
2. (See Appendix), A
3. Comparative, Both applicants
4. Ultimate, Both applicants

XIII.

Applicant, city and state	File No.	MM docket No.
A. Michael Scott Copeland; Vinton, VA.	BPH-880427MA	90-154
B. Clarence W. Taylor; Vinton, VA.	BPH-880428MB	
C. Betty B. Raines and Threasa Davis, d/b/a B and T Broadcasting; Vinton, VA.	BPH-880428MD	
D. Hoffman Media, Inc. of Virginia; Vinton, VA.	BPH-880428MI	
E. Tinker Creek Broadcasters, Inc.; Vinton, VA.	BPH-880428MV	

Issue Heading and Applicants

1. Financial, B, C
2. Air Hazard, A-E
3. Comparative, A-E
4. Ultimate, A-E

XIV.

Applicant, city and state	File No.	MM docket No.
A. Threet Broadcasting, Inc.; Jackson, TN.	BPH-880405MB	90-161
B. Peggy A. Huffman; Jackson, TN.	BPH-880406ME	
C. MWK Broadcasting, Inc.; Jackson, TN.	BPH-880407MI	
D. Jackson Broadcasters Limited Partnership; Jackson, TN.	BPH-880407MO	
E. Lane College; Jackson, TN.	BPED880407NG	

Issue Heading and Applicants

1. Environmental, A
2. (See Appendix), C
3. (See Appendix), C
4. (See Appendix), C
5. (See Appendix), C
6. Air Hazard, A, D
7. Comparative, A, B, C, D, E
8. Ultimate, A, B, C, D, E

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of

the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.

Appendix (St. Matthews, South Carolina)

1. To determine with respect to A (Fellowship) whether, in light of the evidence adduced concerning the deficiencies set forth in the Murrells Inlet, South Carolina Order, the applicant is financially qualified.

2. To determine (a) whether, in light of the evidence adduced pursuant to issue 1, above, A (Fellowship) made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission, or attempted to deceive or mislead the Commission and (b) if issue (a), above, is resolved in the affirmative, the effect thereof on A's (Fellowship) basic qualifications to be a Commission licensee.

Appendix (Jackson, Tennessee)

Additional Issue Paragraphs

2. To determine whether Sonrise Management Services, Inc. is an undisclosed party to C's (MWK) application.

3. To determine whether C's (MWK) organizational structure is a sham.

4. To determine whether C (MWK) violated section 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the dismissal of an application with prejudice in which one or more of its shareholders had an ownership interest.

5. To determine, from the evidence adduced pursuant to issues 2 through 4 above, whether C (MWK) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-11244 Filed 5-14-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Faye M. Brennan, et al.

1. The Commission has before it the following groups of mutually exclusive applications for eight new FM stations:

I.

Applicant, city and state	File No.	MM docket No.
A. Faye M. Brennan; Queensbury, NY.	BPH-870818MC	90-181
B. Barry Skidelsky; Queensbury, NY.	BPH-870819MO	
C. Bradmark Broadcasting Co.; Queensbury, NY.	BPH-870819MT	
D. Aries Broadcasting Corp.; Queensbury, NY.	BPH-870819MZ	
E. New York Broadcasting Corp.; Queensbury, NY.	BPH-870819NC	
F. Normandy Broadcasting Corp.; Queensbury, NY.	BPH-870819NK	

Issue Heading and Applicants

1. City Coverage, F
2. Air Hazard, E, F
3. Comparative, A, B, C, D, E, F
4. Ultimate, A, B, C, D, E, F

II.

Applicant, city and state	File No.	MM docket No.
A. B&C Broadcasting of Lake Charles; Lake Charles, LA.	BPH-880602NO	90-194
B. Boss Action Radio Limited Partnership; Lake Charles, LA.	BPH-880602NP	
C. Porsche Evans Broadcasting, Inc.; Lake Charles, LA.	BPH-880602NV	
D. Trinity Communications, Inc.; Lake Charles, LA.	BPH-880602MU	
E. Sabine Broadcast Corp.; Lake Charles, LA.	BPH-880602MY	

Issue Heading and Applicants

1. Air Hazard, A-E
2. Comparative, A-E
3. Ultimate, A-E

III.

Applicant, city and state	File No.	MM docket No.
A. Cascades Broadcasting, Inc.; Brooklyn, MI.	BPH-870513MA	90-193
B. Brooklyn Radio Partners; Brooklyn, MI.	BPH-870520MD	
C. Geological Technology, Inc.; Brooklyn, MI.	BPH-870601MB	
D. Richard James Tolly; Brooklyn, MI.	BPH-870601MC	

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, A, B, C, D

3. Ultimate, A, B, C, D

IV.

Applicant, city and state	File No.	MM docket No.
A. Topsail Beach FM Limited Partnership; Topsail Beach, NC.	BPH-870812MA	90-182
B. Group Three W, Inc.; Topsail Beach, NC.	BPH-0812MB	.....
C. Roy L. Jones; Topsail Beach, NC.	BPH-0812ML	.....
D. Topsail Broadcasting, a North Carolina General Partnership; Topsail Beach, NC.	BPH-870812ML	.....
E. Jackson Lee Broadcasting Limited Partnership; Topsail Beach, NC.	BPH-870812MN	.....

Issue Heading and Applicants

1. See Appendix, A
2. See Appendix, A
3. See Appendix, A
4. Comparative, A, B, C, D, E
5. Ultimate, A, B, C, D, E

V.

Applicant, city and state	File No.	MM docket No.
A. Ecola Broadcasting Company, Inc.; Seaside, OR.	BPH-880310ML	90-179
B. Seaside Broadcasting Corp.; Seaside, OR.	BPH-880310MN	.....

Issue Heading and Applicants

1. Environmental Impact, A, B
2. Comparative, A, B
3. Ultimate, A, B

VI.

Applicant, city and state	File No.	MM docket No.
A. B&B Broadcasting, Inc.; East Prairie, MO.	BPH-880602MV	90-184
B. Usher Broadcasting Company; East Prairie, MO.	BPH-880602NG	.....

Issue Heading and Applicants

1. Air Hazard, A, B
2. Comparative, A, B
3. Ultimate, A, B

VII.

Applicant, city and state	File No.	MM docket No.
A. Karen S. Klehamer; Avon, NY.	BPH-880629MK	90-180
B. William J. Kimble; Avon, NY.	BPH-880630MA	.....
C. Calcutta Broadcasting Corp.; Avon, NY.	BPH-880630MW (Previously Dismissed)	.....

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B

VIII.

Applicant, city and state	File No.	MM docket No.
A. Pinebrook Foundation, Inc.; Peoria, IL.	BPH-880420MF	90-183
B. B&G Broadcasting Limited Partnership; Peoria, IL.	BPH-880421ML	.....
C. Family Communications Limited Partnership; Peoria, IL.	BPH-880421NP	.....

Issue Heading and Applicants

1. Environmental, A
2. Comparative, A, B, C
3. Ultimate, A, B, C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Topsail Beach, North Carolina)

Additional Issue Paragraphs

1. To determine whether Sunrise Management Services, Inc. is an undisclosed party to the application of A (TBFLP).

2. To determine whether A's (TBFLP) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether A (TBFLP) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-11243 Filed 5-14-90; 8:45 am]

BILLING CODE 6712-01-M

Application Designated for Hearing; Weiner Broadcasting Co.

1. The Commission has before it the following application for a new international broadcast station at Monticello, Maine:

Applicant, City and state	File No.	MM docket No.
Allan H. Weiner ("Weiner"), d/b/a Weiner Broadcasting Company ("WBC") Monticello, Maine.	BPIB-840904MZ	90-243

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, this application has been designated for hearing upon the following issues:

a. To determine whether Weiner operated a radio station on 1616 kHz in Monticello, Maine, at various times from January 31, 1982, through July 16, 1984, without Commission authorization, in violation of § 301 of the Communications Act of 1934, as amended:

b. To determine whether Weiner and/or WBC refused to allow an inspection of Station WOZW(AM), Monticello, Maine, on May 3, 1984, by an authorized Commission representative, in violation of § 73.1225 of the Commission's Rules;

c. To determine whether Weiner and/or WBC failed to comply with the then-prevailing main studio location requirements of § 73.1125 of the Commission's Rules;

d. To determine whether Weiner and/or WBC operated Remote Pickup Base Station KPF-941, Yonkers, New York, to broadcast directly to the public on 1622 kHz, in violation of the permitted uses for remote pickup base stations as stated in the then-prevailing provisions of §§ 74.431(e), 74.431(g), 74.432(c)(2), 74.432(c)(5), and 74.432(g) of the Commission's Rules;

e. To determine whether Weiner and/or WBC misrepresented to the Commission that the transmitter to be used for Remote Pickup Base Station KPF-941, Yonkers, New York, would comply with the then-prevailing type acceptance criteria of § 74.451(a) of the Commission's Rules;

f. To determine whether Weiner, from on or about July 23, 1987, to on or about July 28, 1987, aboard a vessel in international waters and without a license, engaged in operating broadcast stations the transmissions of which were received in the United States, in violation of Article 30, section 1(1), ¶ 2665, of the Radio Regulations of the International Telecommunication Union of the United Nations.

g. To determine, based on the evidence adduced pursuant to the foregoing issues, whether Weiner and/or WBC possess(es) the requisite character qualifications to be a Commission licensee;

h. To determine, based on the evidence adduced pursuant to the foregoing issues, whether the application should be granted.

3. A copy of the complete Hearing Designation Order in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-11245 Filed 5-14-90; 8:45 am]

BILLING CODE 6712-01-M

ACTION: Notice of Request for Comments.

SUMMARY: As required by law, the FDIC is conducting a study and preparing a report for Congress on the establishment of deposit insurance assessment categories related to the types of risk posed by insured depository institutions to the deposit insurance funds administered by the FDIC. The purpose of this notice is to solicit comments, suggestions and any relevant data or statistics from interested parties on the issues to be explored by the FDIC in its study of risk-based deposit insurance assessments.

DATES: Comments must be received by June 29, 1990.

ADDRESSES: Send written comments to Mr. Hoyle Robinson, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Lynn Nejezchleb, Chief, Financial Markets Section, Division of Research and Statistics, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429; telephone: (202) 898-3931.

SUPPLEMENTARY INFORMATION: All FDIC-insured depository institutions are assessed at a flat rate for their deposit insurance coverage and share proportionately in any premium rebates.¹ As a result, deposit insurance rates do not vary with the level of risk that a depository institution poses to the insurance fund. Due to the record insurance losses that have been placed on the books of the commercial bank and savings and loan insurance funds during the 1980's, the implications of flat-rate deposit insurance assessments are being given greater scrutiny.

The system of flat-rate premiums has been criticized on the grounds that it encourages excessive risk-taking and that it inequitably distributes the burden of insurance losses among banks and thrifts. The current flat-rate system is criticized because it provides an inducement for a bank or thrift to increase its portfolio risk without incurring any additional insurance premium expense. Moreover, there is an

equity issue involving the flat-rate system. It is argued that "high-risk" institutions are receiving a subsidy on their deposit insurance coverage at the expense of the "low-risk" institutions. The equity argument would support a system in which institutions with riskier portfolios would be assessed a higher premium for deposit insurance coverage than would the lower risk institutions.

Section 220(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") requires the FDIC to study the establishment of premium assessment categories related to types of risk to the insurance funds and report its recommendations to Congress by January 1, 1991. In connection with that study, the FDIC is soliciting comments on the many proposals which have been offered to date on risk-based deposit insurance assessments. These proposals can be broadly categorized into two groups: (a) Those using market information to assess risk and (b) those using nonmarket information to assess risk. The major approaches within each group are briefly summarized below.

A. Proposals Using Market Information to Assess Risk

Option Pricing: Option pricing theory has been suggested as a method of determining the value of deposit insurance to a bank or thrift (Merton (1977)).² In purchasing deposit insurance, this method would view the institution as having purchased the right to transfer its insured liabilities to the insurer when the value of its assets falls below that of its insured liabilities. The value of this option would be the value of deposit insurance to the institution, and value of the insurance would increase as the net worth of the institution decreases. The feasibility of using the option pricing approach to price deposit insurance would depend upon the ability of the insurer to adequately measure the level and volatility of the market value of the institution's assets in a timely manner. The most frequently used proxy for the volatility of asset values is the movement in the stock-market price of an institution's shares, although this proxy suffers from a variety of problems including the obvious weakness that equity shares for most banks and thrifts are not publicly traded.

Private Reinsurance: Under such proposals, the government would

¹ As mandated in FIRREA, institutions insured by the Savings Association Insurance Fund (SAIF) currently are assessed 0.208 percent of total domestic deposits. This assessment will increase to 0.23 percent from January 1, 1991 through December 31, 1993, and decrease to 0.18 from January 1, 1994 through December 31, 1997. The assessment rate will be set at 0.15 percent thereafter. Bank Insurance Fund (BIF) members are currently assessed at a rate of 0.12 percent. As of January 1, 1991 and beyond, this rate will increase to 0.15 percent.

² Merton, Robert C. "An Analytic Derivation of the Cost of Deposit Insurance and Loan Guarantees: An Application of Modern Option Pricing Theory." *Journal of Banking and Finance* 1 (June 1977): 3-11.

FEDERAL DEPOSIT INSURANCE CORPORATION

Request for Comments and Information Relating to the Study of Risk-Based Deposit Insurance Assessments

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

provide most (say, at least 90 percent) of the insurance coverage for banks and thrifts, with the remainder being held by private insurers. Private insurers would bid in a competitive market for this residual piece of insurance and the price of the winning bid would establish a benchmark for the assessment of both the private and public insurance. In order for such a system to be successful, the private insurer must be able to survive systemic risk so as to deter the threat of "runs" on the insured institution. Therefore, the government may need to certify private insurers and require that they hold a relatively high percentage of reserves against their insured deposits. One variant of this approach can be found in Baer (1985).³

B. Proposals Using Non-market Information To Assess Risk

When it is not possible or when it is undesirable to utilize the market's assessment of risk for an insured depository institution, the federal insurer would be left with the task of developing its own methods for assessing risk. An important distinction among the non-market approaches is whether they measure risk in an *ex ante* or *ex post* fashion. The former attempts to measure the inherent risk of banking activities regardless of the institution's current performance, while the latter measures risk after it has materially affected the performance of the institution. While *ex ante* measures are conceptually preferable, most proposals have used *ex post* measures due to the difficulty of measuring risk *ex ante*.

Asset Risk Baskets: This approach attempts to measure risk in an *ex ante* fashion by classifying assets into broad categories according to their perceived risk of default and attaching risk weights to these categories. This is similar to the approach taken under the risk-based capital guidelines. The measurement of portfolio risk under this system may be questioned on the grounds that it simply attaches risk weights to classes of assets while ignoring the composition of assets within the entire portfolio.

Ratings Based on Examination Information: It has been suggested that information derived from the regulatory agencies' onsite examinations could be used as a basis for risk-based premiums. A product of the examination process is an overall rating from 1 (best) to 5 (worst). This rating, known as the CAMEL rating, is derived from the

examiner's evaluation of a institution's capital adequacy, asset quality, management, earnings and liquidity. Examination data may provide information on an institution's condition that is not available through offsite means. On the other hand, an important function of the examination process is to provide useful information to a bank's or thrift's management (and to the regulators) about the soundness of the institution's operations and how it may be improved. Increasing the financial stakes of the examination process may hinder this important free flow of information. See Hirschhorn (1986) for an example of how examination data could be used in the context of a broader approach.⁴

Failure-Prediction Models: Failure-prediction models utilize historical information to determine the importance of various financial variables in predicting the success or failure of a bank or thrift. Financial variables that have been consistent predictors of past failures (such as measures of nonperforming loans, earnings, capital levels, etc.) could be used to estimate the likelihood of failure for operating institutions, and insurance premiums could be assigned on the basis of each institution's probability of failure. Moreover, combining the estimate of each institution's probability of failure with information about the expected resolution cost to the insurance fund in the event of failure, the risk-based premium could be set at the expected cost to the insurance fund for each institution (roughly equal to the probability of failure, times the expected resolution cost). See Avery, Hanweck, and Kwast (1985) for an example of this approach.⁵

Adjusted Capital Approach: This approach would use a depository institution's capital-asset ratio, adjusted for some measure of asset quality and/or other performance measure(s), as the basis for the institution's deposit insurance assessment rate. One such proposal can be found in FDIC (1983), Chapter II.⁶ Capital is important to the

federal insurer because it provides a protective cushion against adverse changes in an institution's asset quality and earnings. It is this direct relationship between more capital and a lower probability of failure which serves as the foundation for the adjusted capital approach. Three issues must be addressed in formulating the adjusted capital measure: (1) The definition of capital; (2) the adjustment(s) to capital; and (3) the definition of total assets. The first issue would involve questions regarding what should be included in the capital measure (*i.e.*, common equity, allowances for loan losses, subordinated debt, etc.). With regard to the second issue, the adjustment to capital could be based on the historical industry relationship between nonperforming assets (*i.e.*, assets categorized as pastdue and/or nonaccrual) and charge-offs, with this relationship then applied to each institution's current level of such assets. The third issue would involve whether to include some or all of the "off-balance-sheet" assets in the definition of total assets. In sum, this approach has advantages in its simplicity, its use only of information currently reported to the federal banking agencies, and its reliance upon the most proximate measure of risk to the insurance fund—capital.

In addition to the proposals discussed above, the FDIC also is interested in receiving comments, suggestions and any data or statistics relating to the following issues:

1. How important are risk-based deposit insurance premiums in the overall context of deposit insurance reform? Would other reforms eliminate the need for risk-based premiums?
2. Would risk-based premiums adequately address an inequity in the current flat-rate deposit insurance pricing system whereby "low-risk" institutions are subsidizing the deposit insurance coverage of "high-risk" institutions?
3. Would the private market be able to more accurately price deposit insurance (and in so doing, the riskiness of a bank or thrift) than the federal insurer?
4. Would a non-market approach to risk-based premiums result in a form of credit allocation by altering the relative prices of various bank or thrift assets?
5. What effect would a risk-based deposit insurance assessment system have on the competitive positioning of banks and thrifts *vis-a-vis* (i) "non-bank" financial-services providers and (ii) non-U.S. financial institutions?
6. Would an *ex post* assessment system prevent banks and thrifts in

³Hirschhorn, Eric. "Developing a Proposal for Risk-Related Deposit Insurance." Federal Deposit Insurance Corporation *Banking and Economic Review* 4 (September/October 1986): 3-10.

⁴Avery, Robert, Gerald A. Hanweck, and Myron L. Kwast. "An Analysis of Risk-Based Deposit Insurance for Commercial Banks." In the Federal Reserve Bank of Chicago *Proceedings of a Conference on Bank Structure and Competition*, pp. 217-50. Chicago: n.p., 1985.

⁵Federal Deposit Insurance Corporation. *Deposit Insurance in a Changing Environment*. Washington, DC: Federal Deposit Insurance Corporation, 1983.

⁶Baer, Herbert. "Private Prices, Public Insurance: The Pricing of Federal Deposit Insurance." Federal Reserve Bank of Chicago *Economic Perspectives* (September/October 1985): 45-57.

weak financial condition from competing effectively, thus preventing their recovery?

7. Would it be acceptable to use different techniques in assigning deposit insurance premiums for institutions of different sizes or types (*viz.*, commercial banks *vis-a-vis* savings and loans)?

8. Would it be necessary to have an appeals process?

9. How publicly available should information regarding an institution's risk-based assessment be? For example, should a bank or thrift be permitted to use this information to publicly document (say, in advertising) its relative riskiness?

10. What limitations (if any) should be put on using examination information in assigning risk-based premiums?

By Order of the Board of Directors.

Dated at Washington, DC this 30th day of April, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 90-11216 Filed 5-14-90; 8:45 am]

BILLING CODE 6174-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Crowley Caribbean Transport, Inc.

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.: 203-011271-001.

Title: U.S./Peru Discussion Agreement.

Parties:

Crowley Caribbean Transport, Inc.
Empresa Naviera Santa.

Synopsis: The proposed amendment would add Lykes Bros. Steamship Co., Inc. as a party to the Agreement. The parties have requested a shortened review period.

Agreement No.: 203-011279.

Title: Caribbean and Central America Discussion Agreement.

Parties:

Central America Discussion Agreement.
PANAM Discussion Agreement
Southeastern Caribbean Discussion Agreement
Hispaniola Discussion Agreement
U.S. Jamaica Discussion Agreement
Puerto Rico Caribbean Discussion Agreement
United States Atlantic and Gulf/Venezuela Freight; Conference Discussion Agreement.

Synopsis: The proposed Agreement would authorize the parties in the Caribbean and Central America to discuss matters of mutual interest and make non-binding recommendations. The Agreement would not authorize the collective establishment of rates or charges.

By Order of the Federal Maritime Commission.

Dated: May 9, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-11209 Filed 5-14-90; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Philadelphia Port Corp.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200350.

Title:

Philadelphia Port Corporation/J. H. Stevedoring Company Terminal Agreement.

Parties: Philadelphia Port Corporation (PPC), J. H. Stevedoring Company (JHS).

Synopsis: The Agreement provides for JHS to lease certain port facilities (Pier 80 South, with all improvements thereon) and to perform terminal operating and stevedoring services at

the facilities in relation to paper breakbulk cargo, other general breakbulk cargoes, incidental containerized cargo on predominantly non-container vessels; and other cargoes, as specified in the agreement. The initial term of this Agreement is seven years from its effective date and JHS shall have the option to extend the term for one additional period of five years. JHS shall pay to PPC an annual base rent of \$325,000 in twelve equal monthly installments of \$27,083.33 until January 1, 1992, thereafter compensation shall be adjusted as specified in Article 3 of the Agreement.

By Order of the Federal Maritime Commission.

Dated: May 9, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-11208 Filed 5-14-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Commonwealth Bancshares 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 USC 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 June 7, 1990.

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

1. *Commonwealth Bancshares Corporation*, Williamsport, Pennsylvania; to acquire 100 percent of the voting shares of The First Bank of Greater Pittston, Pittston, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *UNC Holding, Inc.*, Sioux Falls, South Dakota; to become a bank holding company by acquiring 98.4 percent of the voting shares of United National Corporation, Sioux Falls, South Dakota; and thereby indirectly acquire First Interstate Bank of South Dakota, N.A., Sioux Falls, South Dakota.

Board of Governors of the Federal Reserve System, May 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11267 Filed 5-14-90; 8:45 am]

BILLING CODE 6210-01-M

**Winter-Park Bancshares, Inc.;
Application to Engage de Novo in
Permissible Nonbanking Activities**

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

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

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1990.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Winter-Park Bancshares, Inc.*, and *Voyageur Development Corporation*, both of Exeland, Wisconsin; to engage *de novo* in acquiring loans, other real estate, and repossessions of a subsidiary, and in the nonbanking activity of making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11266 Filed 05-14-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 902 3037]

**TV Inc., et al.; Proposed Consent
Agreement With Analysis To Aid
Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Largo, Fla. advertiser of bee pollen products from misrepresenting that any advertisement is an independent program and not an advertisement, from claiming that bee pollen will not cause allergic reactions, and from representing that the product has been used as an effective allergy treatment or analgesic. Respondents would be required, for a period of ten years, to present, at the beginning of any television advertisement that is fifteen minutes or more in length and prior to any ordering instructions, a disclosure statement that the program is a paid advertisement. In addition, respondents would be required to have competent and reliable scientific evidence for all future claims concerning any product's effect on the user's health or physical condition.

DATES: Comments must be received on or before July 16, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mark Kindt, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., Suite 520-A, Cleveland, Ohio 44114. (216) 522-4210.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to
Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an Order to Cease and Desist from the use of the acts or practices being investigated.

It is hereby agreed by and between proposed respondents and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent TV Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office or principal place of business located at #7, 11100 66th Street North, Largo, Florida 34643.

Proposed respondent William Thompson is an officer of the corporate respondent named herein. He formulates, directs and controls the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft Complaint here attached.

3. Proposed respondents waive:
(a) Any further procedural steps:

(b) The requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it, together with the draft Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft Complaint here attached.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft Complaint and its Decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and Decision containing the agreed-to Order to proposed respondents' address as stated in this Agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint attached hereto may be used in construing the terms of the Order. No agreement, understanding, representation, or interpretation not contained in the Order or the Agreement

may be used to vary or contradict the terms of the Order.

7. Proposed respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

The following definition shall apply throughout this Order:

Bee pollen product(s) means any product(s) intended for human consumption consisting in whole or in part of bee pollen, and/or bee propolis, and/or royal jelly in any form.

I

It is ordered That respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale or distribution of any product or service in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from creating, producing, selling or disseminating:

(A) Any commercial or other advertisement for any such product or service that misrepresents, directly or by implication, that it is an independent program and not a paid advertisement; and

(B) For a period of ten (10) years from the date of service of this Order, any commercial or other advertisement for any such product or service fifteen (15) minutes in length or longer or intended to fill a broadcasting time slot of fifteen (15) minutes in length or longer that does not display visually, in a clear and prominent manner, within the first thirty (30) seconds of the commercial and immediately before each presentation of ordering instructions for the product or service, the following disclosure:

The program you are watching is a paid advertisement for [the product or service]

Provided, however, that if more than two products or services are advertised, the following disclosure may be used:

The program you are watching is a paid advertisement for the products/services of [name of advertiser]

II

It is further ordered, That respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any bee pollen product(s) in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

(A) That consumption of any bee pollen product(s) cannot or will not result in an allergic reaction;

(B) That consumption of any bee pollen product(s) such as those advertised on *TV Insiders* has been used to successfully treat allergy patients; and

(C) That Alpine Supreme Brand Arthritis-Strength Pain Relief, or any other product of substantially similar composition or possessing substantially similar properties, is an effective analgesic.

III

It is further ordered, That respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, their successors and assigns, and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any product in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

(A) Consumption of any bee pollen product(s) cures, prevents, or alleviates any allergy symptoms;

(B) Consumption of any bee pollen product(s) slows, prevents, or reverses the aging process;

(C) Consumption of any bee pollen product(s) cures or prevents impotence or sexual dysfunction;

(D) Consumption of any bee pollen product(s) promotes weight loss;

(E) It is an effective analgesic; and

(F) It will have any effect on the user's health or physical condition; unless, at the time such representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the

representation. For purposes of the Order, for any test, analysis, research, study or other evidence to be "competent and reliable," the test, analysis, research, study, or other evidence shall be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the relevant profession to yield accurate and reliable results.

IV

It is further ordered, That respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, their successors and assigns, shall, in the manner and subject to the conditions described below, notify the purchasers of bee pollen products who ordered after viewing, in whole or in part, the advertisement entitled "TV Insiders."

(A) Within thirty (30) days after service of this Order, respondents shall send, by first-class mail, to each person who purchased bee pollen products from them prior to the date of service of this Order, a copy of the letter set forth in Appendix A.

(B) The envelope in which all of the above materials are sent shall have as its return address:

FTC/TV Inc. Notification Program

[—Street Address—]

[—City, State, ZIP Code—]

(C) No other information or materials shall be included in the mailings required by this paragraph.

V

It is further ordered, That respondent TV Inc., a corporation, shall distribute a copy of this Order to each of its operating divisions and to each officer and other person responsible for the preparation or review of advertising materials at the time this Order becomes effective.

VI

It is further ordered, That respondent TV Inc., a corporation, shall, for at least three (3) years after service of this Order, maintain and make available to Federal Trade Commission upon request, for inspection and copying, at a place designated by the Commission, complete records regarding respondent's compliance with this Order, such records to include, but not be limited to:

(A) The name and last known address of each purchaser to whom a Notice letter was sent; and

(B) All Notice letters returned as undeliverable.

VII

It is further ordered, That for a period of three (3) years from the date that a representation covered by this Order is last disseminated, respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, shall maintain and upon request make available to the Commission for inspection and copying all advertising, promotional and/or sales materials containing the representatives covered in this Order, and all materials that we relied upon to substantiate such representation and all test reports, studies, surveys, demonstrations or other evidence in respondents' possession or control, that contradict, qualify, or call into question such representation or the basis upon which respondents relied in making such representation.

VIII

It is further ordered, That respondent TV Inc., a corporation, shall:

(A) Notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order; and

(B) Require, as a condition precedent to the closing of the sale or other disposition of 50 percent of the stock or assets of TV Inc., that the acquiring party file with the Commission, prior to the closing of such sale or other disposition, a written agreement to be bound by the provisions of this Order.

IX

It is further ordered, That respondents TV Inc., a corporation, and William Thompson, individually and as an officer of said corporation, shall within one hundred twenty (120) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order, including but not limited to the names and addresses of all recipients of materials pursuant to part IV of this Order.

Appendix A

[TV Inc., Letterhead]

Important Notice

[Date]

Customer Name

Address

City, State ZIP Code]

Dear : We at TV Inc. have voluntarily entered into an agreement with the Federal Trade Commission. We have agreed to a cease and desist order under which we are writing to each of our purchasers of bee pollen products. The purpose of this letter is to inform you that, according to the FTC, claims that consumption of bee pollen products cannot cause an allergic reaction, and that bee pollen can cure allergies are false. According to the FTC, the other health claims made for bee pollen products are unsubstantiated by competent and reliable scientific evidence. We also agree with the FTC that you should be notified that the television program "TV Insiders" is a commercial advertisement for bee pollen, and not an independent consumer or news program.

Sincerely,
William Thompson,
President, TV Inc.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from TV Inc. and its president, William Thompson.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns TV Inc.'s program-length television advertisement for its bee pollen products, entitled "TV Insiders," as well as TV Inc.'s print advertisements for these products.

The complaint alleges that TV Inc. engaged in deceptive advertising in violation of section 5 of the FTC Act by falsely claiming that its television advertisement was an independent and objective consumer or news program. The complaint also alleges that TV Inc., violated sections 5 and 12 of the FTC Act by making false and unsubstantiated claims that consumption of its bee pollen products can not cause an allergic reaction; that bee pollen, in the form and manner advertised on "TV Insiders," has been successfully used to treat allergies; and, that TV Inc.'s bee pollen is an effective analgesic. The complaint also alleges that TV Inc. falsely implied that it had competent and reliable scientific evidence to substantiate claims that bee pollen products can slow, prevent, or reverse the aging process; cure or prevent impotence or sexual dysfunction; promote weight loss; or provide relief for arthritis. According to the complaint, there is no competent and reliable scientific evidence to support any of the health claims made for bee pollen products.

The consent order contains provisions designed to prevent future misrepresentations concerning the nature of TV Inc.'s program-length advertisements. Paragraph I of the

consent order prohibits TV Inc. and William Thompson from misrepresenting that any advertisement is an independent program and not an advertisement. The paragraph also provides that for a period of ten (10) years any television advertisement fifteen (15) minutes or more in length must contain a clear and prominent visual message which states that the program is a paid advertisement. The disclosure must be made at the beginning of the advertisement and prior to any ordering instructions.

Paragraph II of the order prohibits the respondents from claiming that bee pollen will not cause allergic reactions and prohibits the representations that respondents' bee pollen products have been used as an effective allergy treatment or analgesic. Paragraph III of the order requires substantiation consisting of competent and reliable scientific evidence for all future claims concerning any product's effect on the user's health or physical condition.

Paragraph IV of the order requires that TV Inc. send a letter to each of its bee pollen customers notifying them that it has entered into a cease and desist order with the FTC in which, according to the FTC, claims that consumption of bee pollen products cannot cause an allergic reaction, and that bee pollen can cure allergies are false. The letter also notifies TV Inc.'s customers that the other health claims for bee pollen products are unsubstantiated by competent and reliable scientific evidence, and that "TV Insiders" is a commercial advertisement and not an independent consumer or news program.

The remainder of the order contains standard record-retention and notification provisions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,
Secretary.

[FR Doc. 90-11250 Filed 5-14-90; 8:45 am]
BILLING CODE 6750-01-M

[Dkt. C-3286]

Metro MLS, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.
ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia Beach, Va. real estate multiple listing service from forbidding or refusing publication of exclusive agency listings on its multiple listing service. However, respondent is free to require designation of a listing as one granting an exclusive agency. Respondent is required to furnish a copy of the

Commission's order to each of its current and future members; to amend its by-laws, rules, and regulations to conform to the order; and to notify the Commission of certain corporate changes.

DATES: Complaint and Order issued April 18, 1990.¹

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/S-3115, Washington, DC 20580. (202) 326-2770.

SUPPLEMENTARY INFORMATION: On Tuesday, January 30, 1990, there was published in the Federal Register, 55 FR 3105, a proposed consent agreement with analysis in the Matter of Metro MLS, Inc. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.

[FR Doc. 90-11249 Filed 5-14-90; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Pensions, Savings, Health Expenditures, Long-term Care, and Retirement Grant Announcement

Pursuant to section 1110 of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States, public (including institutions of higher education), non-profit, and for-profit organizations.

A. Type of Application Requested

In the next decade, several important policy issues regarding health financing and income support for the elderly will emerge. These issues will require a comprehensive examination of the economic well-being of the elderly. Because of the large number of HHS-

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

administered programs for the elderly, the need to understand the economic status of the elderly is obvious. Less obvious, but equally important, are policy issues relating to the financing of Hospital Insurance (HI) and Old Age and Survivors Insurance (OASI), the provision of retiree health and pension benefits, and taxation. The integration of all issues affecting the elderly requires a broader perspective on departmental health financing and income support policies.

One issue that will become more important over the next few years is the trade-off between financing health care versus direct monetary support for the elderly. In terms of government programs, future financing problems for HI have already been predicted. If payroll taxes intended to build a reserve for the OASI are used as an expedient measure to partially finance HI instead, then the under-funding of OASI benefits in the next century will become a reality. In the private sector, the analogous tradeoff is between retiree health benefits and pension benefits. Government policy directly affects this tradeoff by providing tax incentives for the firms' funding of these benefits. Government policies can also indirectly affect private sector programs by providing substitutes for those programs (e.g. OASI and HI). To inform policy decisions in private sector and public sector provisions of health care financing and retirement income programs, it is important to understand the interaction between the public and private provision of benefits, and the relationship between health care financing and income security.

Furthermore, as has become obvious in the debate about the Medicare Catastrophic Coverage Act, one cannot ignore the effects of taxation when formulating policies affecting the elderly. There is great concern about the overall burden of taxation on the elderly from an income security standpoint. In addition, concerns about the behavioral responses to taxation have been raised. For example, the fact that taxation can adversely affect saving patterns and labor supply cannot be ignored.

The confluence of trends in the public and private sector related to the income support of the elderly, the increasing cost of health care, and the means of financing programs for the elderly calls for a comprehensive study of issues in these areas. This announcement seeks applications to develop and conduct a program of research relating to national policy concerns in the area of income security policy affecting the elderly. The following paragraphs describe the

general area of interest in greater detail by enumerating high priority areas of research. The questions are intended as illustrative of specific concerns.

Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

A broad range of methodologies is acceptable for the purpose of this grant competition. However, all proposed projects should embody a sound theoretical base upon which new and original empirical work, employing the most useful and relevant data bases, is built. Applicants must demonstrate knowledge of past and current research relating to the priority area under consideration, and they must also demonstrate access to data adequate to conduct the proposed study.

1. *The high priority research areas for which applications for the proposed program of research are most desired are as follows:*

a. *Retiree health insurance*

According to the General Accounting office, there were about 3 million retirees in corporate-financed health plans in 1983. By 1988, the number had doubled, and may double again to 12 million in 10 years. The numbers are driven by the demographics of the population, and are particularly influenced by the demographics of large manufacturing firms.

The Financial Accounting Standards Board (FASB) has issued an exposure draft that includes proposed accounting standards that require the present value of future retiree health benefits earned by employees to be charged as a cost against firms' earnings. Furthermore, all benefits already accrued will be gradually recognized on firms' balance sheets over a period of time. These proposed changes in accounting procedures for health benefits stem from the recognition of firms' financial liabilities for the health care cost of current and future retirees. The proposed accounting changes, along with the widely expected increase in the cost of medical care, may lead to changes in the extent and nature of retiree health benefits. For example, firms may limit their financial contributions toward the health care of future retirees. This action that could imply that older persons will either have to save more to self-finance health care during retirement or it could lead to increased pressure to provide more generous benefits under Medicare. It is clear, however, these interactions will change financial planning for retirement

by the elderly and effect government health care financing and income security programs.

Retiree health insurance interacts with many Federal programs, including Medicare, Medicaid, and even the income tax. For example, how would an income-based premium for health insurance, such as in the original Medicare Catastrophic Coverage Act (MCCA), affect the provision of retiree health benefits? Would expanded government-financing of health expenditures, in concert with the changes in the FASB procedures, encourage employers to cut contributions to retiree health plans? If firms' contributions are cut, the costs borne by the elderly themselves or by other Federal programs may rise.

This announcement requests applications for projects that seek to answer questions about the impact of retiree health insurance on the retirement and financial decisions of the elderly. Examples of topics of interest include, but are not limited to: the interaction between private retiree health insurance and Federal programs, the effect of the FASB changes on the provision of retiree health benefits, the lifetime health expenditure patterns of the aged given income and assets, and the effects of retiree health insurance on retirement decisions.

b. *Taxation and the elderly*

The elderly can either attempt to spend all of their income and wealth before they die, or they can plan to spend their resources so that a portion of their estate is left for heirs. Taxes faced by the elderly may affect their expenditure patterns and financial planning. Such taxes include estate and gift taxes, taxes on social security benefits, state, local and federal income taxes, payroll taxes, and other implicit and explicit taxes not faced by the non-elderly population. Implicit taxes, such as those related to asset spend-downs to become eligible for SSI or Medicaid, may also affect the expenditure patterns of the elderly. While the impact of any one tax may be slight, the interaction of taxes faced by the elderly population may be very important. These taxes clearly have the potential to affect the behavior of the elderly, and they may also affect the economic behavior of heirs who expect to receive transfers.

Estate and gift taxes may affect how elderly individuals spend their wealth during the last phase of their lives. Although the application of relevant tax laws can be complicated, the basic rule provides a tax credit of up to \$192,000 on the transfer of assets from a decedent to living heirs. This essentially provides for

a tax-free transfer of estates worth \$600,000 and less. A related tax law is the gift tax. A living individual can provide up to \$10,000 yearly to each recipient tax-free; amounts over the limit are added to the value of the estate at death.

It is easy to see that expenditure patterns by elderly individuals could be affected by these laws. An individual who wants to leave a bequest may leave a smaller one than he otherwise would in order to save taxes. On the other hand, he may leave a larger gross bequest than planned so that the bequest net of taxes will be as he desired.

Elderly individuals may have other reasons besides a bequest motive for spending their savings and income frugally. One reason is uncertainty about one's life expectancy and health at the end of one's life. For example, if an elderly individual expects to become unable to care for himself toward the end of his life, he may want to save for the possibility that he will end up in a nursing home. On the other hand, since Medicaid will pay for the nursing home care of an elderly person with limited income and no assets, he may feel that it is less necessary to save for his own long-term care.

Housing is an important asset in the financial portfolio of the elderly. In many cases, a substantial portion of an elderly individual's wealth is in his house, even for those elderly who appear to be liquidity-constrained. In fact, very few elderly people choose to dis-save by reducing housing equity, a puzzle to many observers. There may be non-financial reasons for not liquidating housing equity (for example, the security of owning one's home outright).

Tax laws and medicaid spend-down requirements may provide implicit encouragement to the elderly to keep large portions of their wealth in home equity. For example, under certain circumstances, Medicaid rules allow an elderly person who is temporarily in a nursing home to exhaust all of his other assets but keep his house. Thus, government policy may encourage the elderly individual to store a disproportionate amount of his wealth in housing. Another government policy that encourages a disproportionate share of wealth to be held in housing is the tax treatment of capital gains on houses transferred at death. Because the heir's cost basis in the house becomes the market price on the date of his benefactor's death, any capital gains accrued before that date are forgiven. By taking advantage of this aspect of the

tax law, most of the taxes on the capital gains on the house can be avoided.

Finally, the decision to continue to hold housing-equity may affect decisions with respect to living arrangements and household formation. These in turn may affect health care and other aspects of elderly individuals' quality of life.

The elderly face some explicit and implicit taxes that are not applicable to other segments of the population. For example, under the original Medicare Catastrophic Coverage Act (MCCA), some of the elderly were subject to a supplemental premium which is equivalent to an income surtax. This surtax, in conjunction with other taxes, would have made effective marginal tax rates very high for some elderly individuals. It is possible that an elderly individual may face a higher tax rate than a non-elderly individual with similar resources. This fact may encourage *inter-vivos* transfers between the elderly and non-elderly, and may cause the elderly to behave differently than the non-elderly with respect to use of tax-shelters, labor force participation, and so on.

In the light of future government revenue needs and the expected high health-care costs, tax policy questions are important. Policy decisions about new sources of revenue and/or changes in existing taxes should be made taking into account the issues discussed above. The Department is particularly interested in how these issues might affect the future financing of OASDI and HI.

The announcement requests applications for projects that seek to answer questions about the effects of taxation (e.g. estate and gift taxation, and income taxation) and the asset rules that determine Medicaid eligibility on the expenditure patterns and financial planning (including desired bequests) by the elderly. In particular, a specific focus on the treatment of housing is appropriate. Applicants are encouraged to consider the interaction of taxes facing the elderly when applicable.

c. Effects of Federal Policy on Family and Intergenerational Income and In-kind Support

Tax policy, income security policy (such as pension regulation and the provision of social security benefits), and health policy, such as (medicare and medicaid) have improved the economic well-being of the elderly. The explicit and implicit government-provided income transfers have had possible effects on financial and social relationships among the generations within individual families. For example,

in the absence of social security benefits, children may have provided greater financial and in-kind (e.g. housing) support for their parents.

Transfers and in-kind support can go in several directions: to elderly parents from children, to children from elderly parents, or between grandchildren and grandparents. This support may be affected by the economic well-being of the family members, a lifetime of family events, geographic proximity, and government policies.

A specific issue that has important current and potentially greater future impact on the well-being of the elderly is the common practice of adult children (particularly daughters) taking care of frail elderly parents. This care sometimes is sufficient to enable some elderly parents to live independently. Other times it supplements care given in nursing homes or hospitals. The recent and projected increase in the labor force participation of women, increases in single-parent families, and increased geographic dispersion of adult children and their parents may imply reduction in this kind of activity. What factors affect the availability of "parent care?" To what extent is it affected by labor force participation, geographical proximity, financial considerations, quality of paid-care used or available, health of the adult children and their parents, or other factors? What are the implications for income security policy of potential decline in "parent care?" Which government policies encourage or discourage "parent care?"

This announcement requests applications for projects that seek to answer questions about intergenerational relationships that affect or are affected by the economic well-being of the elderly and how these interactions may or may not be influenced by government policy. Examples of topics of interest include, but are not limited to: financial transactions between the elderly and their children and grandchildren, the relationship of economic-well being of the elderly to household composition and living arrangements, and the relationship of "parent care" to economic well-being of elderly parents and their children. Applications that emphasize the importance and impact of these issues on government income security policies are especially desired.

d. Issues in Long Term Care

The Department has undertaken a number of projects to model the demand for and financing of long-term care nationally. In particular, the Department has sponsored the Brookings-ICF model which is being used to predict the effects

of various financing and organizational reform options on future utilization and public and private expenditures for nursing home and home care. Other modeling efforts are underway under other sponsorship (for example, the Health Insurance Association of America is funding modeling by Lifeplans, Inc.).

The following are among the questions that might be fruitfully addressed through long-term care financing systems modeling and simulations: Why do long-term care expenditures vary across states and what accounts for these variations? What are projected State level participation rates and public and private expenditures for long-term care based on alternative policy scenarios, e.g. Medicaid restructuring, comprehensive entitlement, growth of private insurance and tax incentives? How sensitive are long-term care expenditures to various cost-sharing options among States?

Another important issue in the long-term care area is the size and effects of catastrophic burdens on long-term care clients and their families. Appropriate questions for applications under this grant announcement include: What populations experience catastrophic health expenses (including uncovered medical and long-term care costs)? How should catastrophic medical expenses be defined (e.g. in terms of amounts over a fixed dollar threshold or on a sliding scale basis according to percentage of income)? What are the out-of-pocket health expenses in excess of an absolute dollar amount (ie; \$2,000, \$5,000, \$10,000)? What are the total out-of-pocket expenses as a percent of family income (ie; 5%, 10%, 15%)? What are the current private and public insurance mechanisms for managing catastrophic medical expenses? How many chronically impaired adults with what characteristics experience financially catastrophic health and long-term care expenditures? How many children and their families experience catastrophic medical costs? What are the characteristics of these children and these families? What percent of adults and children experience catastrophic home care expenditures as opposed to nursing home expenditures and what are their characteristics? What impact do high out-of-pocket costs have on Medicaid participation, living arrangements, and the quality of life of impaired persons? What is the interaction between high out-of-pocket payments, "catastrophic costs" and Medicaid spend-down? To what extent do members of the Medicaid "spend

down" population own their homes? What is the value of such homes and what happened to the equity in their homes prior to becoming Medicaid-eligible?

One final area of importance in long-term care is the choice of living and housing arrangements for the long-term care populations. Questions of interest in this area might include: What types of living arrangements characterize people with long-term care needs? What changes in living arrangements occur for the elderly and the under age 65 population over time and what socioeconomic and health characteristics are associated with these changes? What types of living arrangements are likely to be more common in the future? What patterns of housing exist for people with long-term care needs? How do living arrangements affect patterns of formal services use?

2. Products

The applicant should present a schedule for delivery of interim progress reports and a final report.

3. Potential Users

Potential users of the research include policy makers at Federal, State, and local levels of government, as well as professionals in social services, demography, economics, sociology, social work, and related fields. Because many of those who will be interested in this research lack advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. This will involve the submission of a separate, non-technical executive summary.

4. Types of Projects Excluded

In consideration of the intent of this announcement, applications concentrating on a narrow programmatic or policy focus, or on one that is not directed to concerns of national interest, will not be considered for funding.

5. Content and Organization of the Applications

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a statement of the issue(s) being examined, the probable direction model development will take, a discussion of some of the likely hypotheses that the model will explain, and a discussion of possible

data sources to test the hypotheses. Resumes of staff should be included, as should a full budget and a schedule for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR part 63), *Code of Federal Regulations*, October 1, 1980.

2. "Administration of Grants" (45 CFR part 74), *Code of Federal Regulations*, June 9, 1981.

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made on or about September 15th; however, some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. It is expected that projects will be completed within a 12-month period. Longer projects will be considered.

D. Statement of Funds Available

1. \$350,000 has been set aside for grants to be awarded in Fiscal Year 1990 among areas a, b, and c. Area d is subject to availability of FY 1991 funds, awards to take place, if funded, after October 1, 1990. Applications may be for any amount, but it is expected that most awards will be for single projects between \$40,000 and \$80,000. Furthermore, the Government at its option may fund applications received in any area from this announcement in FY91.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on the applicant's submitting a written agreement of the outside funding commitment.

2. Funds may be obligated fully at the time of award of these grants or incrementally.

3. Nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively

shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 25 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the financial status and health expenditures by the elderly, and retirement with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of science. (25 points)

b. *Clarity and Understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. *Modeling Strategy.* The appropriateness and soundness of the research design and modeling strategy. Probability of successful completion of the study. (40 points)

d. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (20 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than June 28th 1990, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than June 28th 1990, as evidenced by a receipt from the commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9 a.m. and 4:30 p.m., Washington, DC, time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on June 29th 1990.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245-1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after June 1st 1990.

IMPORTANT—Application for Federal

Assistance (Standard Form 424) must be submitted on the new form revised 4/88.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR part 100.

Dated: May 8, 1990.

Martin H. Gerry,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 90-11252 Filed 5-14-90; 8:45 am]

BILLING CODE 4110-60-M

Food and Drug Administration**Advisory Committees; Renewals**

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463 (5 U.S.C. App. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Secretary formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Vaccines and Related Biological Products.	Dec. 31, 1991.
Medical Imaging Drugs (formerly Radiopharmaceutical Drugs).	Feb. 28, 1992.
Gastrointestinal Drugs.....	Mar. 3, 1992.
Fertility and Maternal Health Drugs.	Mar. 23, 1992.
Arthritis.....	Apr. 5, 1992.
Veterinary Medicine.....	Apr. 24, 1992.
Anesthetic and Life Support Drugs.	May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: May 8, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-11188 Filed 5-14-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Drug Abuse Advisory Committee

Date, time, and place. June 4 and 5, 1990, 9 a.m., Conference rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, June 4, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:30 p.m.; open committee discussion, June 5, 1990, 9 a.m. to 4:30 p.m.; S. Lei Johnson, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs which possess stimulant, depressant, or analgesic properties, including those aspects of safety related to the potential of these drugs to produce dependence and to be abused.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 21, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) Abuse and rescheduling of glutethimide; (2) a Drug Abuse Advisory Committee (DAAC)-generated report on the agonist-antagonist opioid analgesics; (3) a post-marketing proposal for studying the abuse of dezocine and other agonist-antagonist analgesics; and (4) interim reports of the DAAC subcommittees on the development of guidelines for the clinical evaluation of medications for

the treatment of drug addiction and guidelines for animal and human abuse liability testing.

Obstetrics-Gynecology Devices Panel

Date, time, and place. June 11, 1990, 9 a.m., Conference rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD, and June 12, 1990, 9 a.m., Piccard Bldg., First Floor Conference room, 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person.

Open public hearing, June 11, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, June 12, 1990, 9 a.m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1230.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 2, 1990 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 11, 1990, the committee will review, discuss, and make a recommendation on a premarket approval application on a home uterine activity monitor for preterm labor. On June 12, 1990, the committee will discuss diagnostic ultrasound education.

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. June 11 and 12, 1990, 8:30 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person.

Open public hearing, June 11, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, June 12, 1990, 8:30 a.m. to 4 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of

marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open public hearing.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 4, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 11, 1990, the committee will discuss: (1) Nedocromil—NDA 19-660 (Tilade®), Fisons Corp.; (2) card₂—vascular effects of terfenadine (Seldane®), Merrell Dow Pharmaceuticals, Inc.; and (3) combination of newer antihistamines and decongestants. On June 12, 1990, the committee will discuss: (1) Considerations for trials to show equivalency for generic inhaled bronchodilators and new actuators; (2) update on chlorofluorohydrocarbons; and (3) labeling of antihistamines in relation to asthmatic patients.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. June 14 and 15, 1990, 9 a.m., Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person.

Open public hearing, June 14, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, June 15, 1990, 9 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4730 or 419-259-6211.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 31, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and

an indication of the approximate time required to make their comments.

Open committee discussion. On June 14, 1990, the committee will discuss Lopressor, metoprolol succinate, controlled release formulation, NDA 19-962, Hassle (New Drug Services). On June 15, 1990, the committee will discuss Cardene, nicardipine injection, NDA 19-734, DuPont Critical Care, to be indicated for the treatment of acute hypertension.

Clinical Chemistry and Clinical Toxicology Devices Panel

Date, time, and place. June 19, 1990, 10 a.m., First Floor Conference rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person.

Open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1243.

General function of the committee.

The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing.

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 1, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a device used for the quantitative measurement of progesterone receptor in human tissue cytosols for use as an aid in assessing the likelihood of response to hormonal therapy and in the prognosis and management of breast cancer patients.

Oncologic Drugs Advisory Committee

Date, time, and place. June 29, 1990, 8 a.m., Regency Ballroom, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD.

Type of meeting and contact person.

Open committee discussion, 8 a.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; David F. Hersey, Center for Drug Evaluation and Research (HFD-9), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in cancer therapy.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 15, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss investigational new drug application No. 34,223 Nolvadex® (tamoxifen citrate), ICI Pharmaceuticals Group, for use in a breast cancer prevention study in healthy women.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative

proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-18, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 8, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-11246 Filed 5-14-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Amendment of Meeting Notice

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a previously announced public advisory committee meeting notice of the Dermatologic Drugs Advisory Committee to be held on May 21, 1990. The announcement of the Dermatologic Drugs Advisory Committee meeting, which was published in the Federal Register of May 1, 1990 (55 FR 18178), is revised to read as follows:

Joint Meeting of the Dermatologic Drugs and Fertility and Maternal Health Drugs Advisory Committees

Date, time, and place. May 21, 1990, 8 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, May 21, 1990, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

General function of the committees. The Dermatologic Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases. The Fertility and Maternal Health Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 18, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss new drug application (NDA) 19-963 (Tretinoin Emollient Cream) and NDA 18-662 (Accutane Capsules®).

Dated: May 8, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-11187 Filed 5-14-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement for Scholarships for the Undergraduate Education of Professional Nurses Grant Program

The Health Resources and Services Administration announces that applications will be accepted for the Fiscal Year (FY) 1990 Scholarships for the Undergraduate Education of Professional Nurses (SUEPN) Grant Program under the authority of section 843 of the Public Health Service Act, as added by Pub. L. 100-807.

Approximately \$3,300,000 is available in FY 1990 for competing awards. In 1989, \$1,400,000 was awarded to 400 students, for an average award of \$3,500. It is estimated that 825 scholarships will be made in FY 1990, averaging \$4,000 per award. Continuations of scholarship awards will be based on funding availability for FY 1991. The period of fund availability will be for each academic year, and a recipient must meet a statutory service obligation as indicated below.

Purpose

The Scholarships for the Undergraduate Education of Professional Nurses Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending these schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

In the Federal Register of November 30, 1989 (54 FR 49360), HRSA proposed the following categories of facilities as meeting the criterion of a "health facility having a critical shortage of nurses" for purposes of this program:

(a) All rural hospitals, as classified by the Medicare and Medicaid programs.

(b) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a significantly disproportionate number of low-income

patients, as determined by the Medicare and Medicaid Programs.

(c) Home health agencies approved for Medicare and Medicaid reimbursement.

(d) State and local health departments.

The November 30 notice also included definitions for the other facilities specified as eligible service sites. The notice on the final categories of facilities is now being prepared for publication in the Federal Register. It is expected that the final notice will include additional eligible categories of facilities.

Eligible Grant Applicant's

To be eligible for a grant, an applicant must be a public or private nonprofit school which is accredited for the training of professional nurses and is located in a State. The grantee in turn awards scholarships to students who are obligated to serve.

Funding Preference

In FY 1989 the following funding preference in the award of SUEPN scholarship grants was established, after public comments were received, and is being extended for FY 1990. Preference in the award of SUEPN scholarship grants will be given to applicants whose average enrollment of underrepresented minority students (i.e., Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, Asian or Pacific Islander), for the past 3 years exceeds 15.7 percent, which is the national average enrollment of underrepresented minorities in undergraduate nursing programs for the 1987-88 school year. These population groups continue to be underrepresented in the nursing profession. Their representation should be increased to ensure equitable opportunities to a career in nursing.

As a component of the final FY 1989 competing SUEPN notice, it was also announced that preference in the awarding of future scholarships would be given to grantees with previous recipients still enrolled. This is to allow recipients to continue their education. In FY 1990 preference is being given to those previous recipients who are still enrolled and otherwise meet program requirements. No funds are proposed for this program in the President's Budget for FY 1991. However, it is proposed, should appropriations be made available, that preference in awarding future grants continue to be given to grantees with previous recipients still enrolled. Applicants would need to compete for funds for new recipients.

Eligible Students

To be eligible for a grant an individual must:

(1) Be enrolled or accepted for enrollment as a full-time nursing student in a program leading to a degree or diploma, which prepares individuals to qualify for licensure to practice as a registered/professional nurse in a State;

(2) Be in financial need with respect to attending such nursing school;

(3) Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands, Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia; and

(4) Sign the contract prescribed by the Secretary setting forth terms and conditions of the scholarship, including an agreement to serve as a full-time registered nurse upon graduation for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a nursing facility, or in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses as indicated in the Purpose section of this notice.

Preference in the Selection of Scholarship Recipients

In accordance with the statute, the Department will require schools:

(1) To give preference in awarding scholarships to individuals from disadvantaged backgrounds as determined in accordance with criteria prescribed by the Secretary under section 827(a) of the Act (formerly section 820(a)(1)). These criteria, as set forth in regulations at 42 CFR 57.1905(b) are as follows:

(a) The individual comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(b) The individual comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and which have been multiplied by a factor for adaptation to this program (These income levels are included below.); and

(2) To assure that a scholarship provided for full-time attendance will not, for any year of such attendance, exceed the amount of the tuition and any fees for the year involved; and

(3) To require scholarship recipients to sign a contract.

The following income figures determine what constitutes a low income family for purposes of Scholarships for the Undergraduate Education of Professional Nurses Grant Program for FY 1990.

Size of parent's family ¹	Income level ²
1.....	\$8,300
2.....	10,800
3.....	12,800
4.....	16,400
5.....	19,400
6 or more.....	21,800

¹ Includes only dependents listed on Federal income tax forms.

² Rounded to the nearest \$100. Adjusted gross income for calendar year 1989.

Application Deadline

One grant cycle will be held annually for the Scholarships for the Undergraduate Education of Professional Nurses Grant Program. To receive consideration for FY 1990 funds, applications must meet the deadline of June 18, 1990.

Applications shall be considered as meeting 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 for review. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The application form and instructions have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act.

Requests for application materials and requests for technical assistance and information should be directed to: Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4776.

Completed applications should be returned to the Division of Student Assistance at the above address.

This program is listed at 13.182 in the *Catalog of Federal Domestic Assistance*.

It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

Dated: April 5, 1990.
Robert G. Harmon, M.D.,
Administrator.

[FR Doc. 90-11247 Filed 5-14-90; 8:45 am]
BILLING CODE 4190-15-M

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration, Public Health Service, Department of Health and Human Resources.

ACTION: Notice of extension of application due date.

SUMMARY: This notice extends the application due date for demonstration grants for the expansion and improvement of emergency medical services (EMS) for children. The application due date for EMS for children is extended to June 20, 1990. All other aspects of the January 5, 1990 Federal Register Notice (55 FR 490) remain the same.

Dated: May 9, 1990.
Robert G. Harmon,
Administrator.

[FR Doc. 90-11290 Filed 5-14-90; 8:45 am]
BILLING CODE 4190-15-M

Request for Comments: Technical Assistance to Rural Hospitals

AGENCY: Health Resources and Services Administration.

ACTION: Notice: Request for comments.

Summary: The Health Resources and Services Administration (HRSA), Office of Rural Health Policy (ORHP), is interested in obtaining public comments and suggestions to assist the Office in planning a program of technical assistance to rural hospitals. The ORHP is anticipating that funds may become available in Fiscal Year 1991 for technical assistance to rural hospitals. The ORHP invites comments on the needs of rural hospitals for technical assistance and support.

Background Information: There are currently over 2,500 rural hospitals throughout the country. Many of these hospitals are experiencing severe financial difficulties. Further, the rate of rural hospital closures has increased in recent years. The Department of Health

and Human Services supports a variety of activities to assist rural hospitals in addressing their difficulties. These include the Rural Hospital Transition Grant Program currently in its second year. The Rural Hospital Transition Grant Program provides grant support to rural hospitals with less than 100 beds to assist them in developing and implementing a wide variety of hospital based programs in their communities. The program is limited to rural hospitals that meet specific criteria established by law. We expect that the new technical assistance program to be administered by the ORHP will be more flexible. It could focus on the needs of a select few hospitals, or it could be designed to provide more generalized assistance to a large number of rural hospitals.

Request for Comments: The ORHP is requesting comments from rural hospital administrators, hospital associations, rural community leaders, public health officials and other interested groups on the provision of technical assistance to rural hospitals. More specifically, the ORHP would be interested in obtaining responses to the following questions:

(1) What would be the most efficient and effective use of the limited funds that are likely to become available for technical assistance to rural hospitals?

(2) What are the specific problems and issues for rural hospitals that a technical assistance program could best address? For example, should the program focus on planning issues? Marketing strategies? Alternative models of care? etc. Should there be a special emphasis on financial planning and analysis (e.g. cost center analyses)?

(3) Are there specific products that would have widespread application to a large number of rural hospitals? For example, would funds be well spent on the development of video tapes, self-help instructional materials, etc. on key issues affecting rural hospitals?

(4) Would a series of regional conferences or workshops for rural hospital administrators and others be an effective method of providing technical assistance on specific issues?

(5) Should a technical assistance emphasis be directed toward a particular audience such as hospital administrators, hospital board members, financial managers, etc.?

(6) Should some technical assistance efforts be devoted to facilitating the development of collaborative arrangements among rural hospitals and/or between rural hospitals and larger urban institutions?

Respondents are asked not to limit their comments and suggestions to these questions. However, we believe that

responses to these questions will be particularly helpful to our deliberations on how to structure the proposed technical assistance program.

Interested persons are invited to comment by 45 days from the date of publication of this notice.

Written Comments should be addressed to: Director, Office of Rural Health Policy, Health Resources and Services Administration, Parklawn Building, room 14-22, 5600 Fishers Lane, Rockville, MD 20857.

All comments received will be available for public inspection and copying at the Office of Rural Health Policy at the above address, weekdays (except Federal holidays) between the hours of 8:30 a.m. and 5 p.m.

Dated: May 9, 1990.

Robert G. Harmon,
Administrator.

[FR Doc. 90-11289 Filed 5-14-90; 8:45 am]

BILLING CODE 4160-15-M

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 54 FR 38124, July 5, 1989) is amended to reflect the following:

1. Abolishment of the Bureau of Maternal and Child Health and Resources Development;
2. Establishment of a new Maternal and Child Health Bureau;
3. Establishment of a new Bureau of Health Resources Development;
4. Transfer of the Maternal and Child Health Program from the Bureau of Maternal and Child Health and Resources Development to the new Maternal and Child Health Bureau; and
5. Transfer of the organ transplantation, HIV services, and Health Facilities programs from the Bureau of Maternal and Child Health and Resources Development to the new Bureau of Health Resources Development.

Under HB-10, Organization and Functions amend the functional statements for the Health Resources and Services Administration (HB) as follows:

1. After the functional statement for the Division of Legislation (HBA64), Office of Planning, Evaluation and Legislation (HBA6), add the following functional statements:

Bureau of Health Resources Development (HBB)

Develops, administers, directs, coordinates, monitors, and supports Federal policy and programs pertaining to health care facilities, a national network of activities associated with organ donations, procurements, and transplantation, and activities related to acquired immune deficiency syndrome (AIDS). This includes financial, capital, organizational, and physical matters. Specifically: (1) Provides national leadership in supporting, identifying, and interpreting national trends and issues of significance relative to the health status of persons with AIDS, and with HIV infections, including the provision of facilities and services for AIDS and AIDS-related patients, persons in need and provision of services to the indigent; and administers block and discretionary grants, contracts, and funding arrangements designed to address those issues; (2) administers grant, loan, loan guarantees and interest subsidy programs under Titles VI and XVI of the Public Health Service Act, as amended, relating to the construction, modernization, conversion and closure of health and health care organizations; (3) develops long and short range program goals and objectives for health facilities, and for specific health promotional, organ transplantation and AIDS activities; (4) develops, conducts, and maintains a program of grants to organ procurement organizations (OPOs); (5) serves as advisor to and coordinates activities with other Administration organizational elements, other Federal organizations within and outside the Department, State and local bodies, professional and scientific organizations; (6) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (7) provides technical assistance to OPOs and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (8) administers HRSA's regional facility engineering and construction activities; and (9) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of Bureau missions and objectives.

Maternal and Child Health Bureau (HBM)

Develops, administers, directs, coordinates, monitors, and supports Federal policy and programs pertaining to health and related care for the Nation's mothers, children and children

with special health care needs.

Programs administered by the Bureau address the full spectrum of primary, secondary and tertiary care services and related activities conducted in the public and private sector which impact on maternal and child health. Specifically: (1) Provides national leadership in supporting, identifying and interpreting national trends and issues of significance relative to the health and related status of mothers, infants, children, and children with special health care needs, and administers State block and discretionary grant, contract and other funding arrangements designed to address these issues; (2) administers grants, contracts and other funding arrangements and programs under Title V of the Social Security Act, as amended, relating to implementation of State maternal and child health (MCH) service programs, research, training and education programs located in institutions of higher learning and State and local health agencies and organizations involved in the care of mothers and children; (3) administers grants, contracts and other funding arrangements under Title III of the Public Health Service Act for care and improvement of the health status of persons affected by pediatric AIDS; (4) administers grants, contracts and other funding arrangements under Title V of the Social Security Act, as amended, related to the care of persons affected by hemophilia (regardless of age); (5) administers grants and contracts under Title XIX of the Public Health Service Act related to Pediatric Emergency Medical Systems development and care improvement; (6) develops, promotes, and directs efforts to improve the management, financing, operational effectiveness and efficiency of health care systems, organizations and providers of maternal and child health and related care; (7) serves as the principal advisor to and coordinates activities with other Administration organizational elements, other Federal organizations within and outside the Department, and with State and local agencies, and professional and scientific organizations; (8) provides technical assistance and consultation to the full spectrum of primary, secondary, and tertiary MCH agencies and organizations in both the public and private sector; and (9) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of the Bureau's mission and objectives.

2. Delete the Bureau of Maternal and Child Health and Resources Development (HBR) in its entirety.

Delegations of Authority

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: May 4, 1990

Louis W. Sullivan,

Secretary.

[FR Doc. 90-11253 Filed 5-14-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 27-28, 1990, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on June 27 will be open to the public from 8:30 to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92-463, the meeting on June 27 will be closed to the public for the review, discussion, and evaluation of individual grant applications from approximately 11 a.m. to 5 p.m., and on June 28, from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health.)

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-11268 Filed 5-14-90; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following study sections for June 1990, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. 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.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	June 1990 meetings	Time	Location
Allergy & Immunology, Mr. Howard M. Berman, Rm. A19, Tel. 301-496-7380.	June 16-18	8:30	Holiday Inn Crowne Plaza, Rockville, MD.

Study section	June 1990 meetings	Time	Location
Bacteriology & Mycology-1, Dr. Timothy J. Henry, Rm. 306, Tel. 301-496-7340.	June 11-13	8:30	Guest Quarters, Suite Hotel, Bethesda, MD.
Bacteriology & Mycology-2, Dr. William Branche, Jr., Rm. 306, Tel. 301-496-7682.	June 6-8	8:30	The Savory Suites Hotel, Washington, DC
Behavioral Medicine, Dr. Joan Rittenhouse, Rm. 438, Tel. 301-496-7109.	June 6-8	8:30	Casa Marina Hotel, Keywest, FL.
Biochemical Endocrinology, Dr. Michael Knecht, Rm. 226, Tel. 301-496-7430.	June 6-8	8	NIH Room 9, Bldg. 31C, Bethesda, MD.
Biochemistry, Dr. Adolphus P. Toliver, Rm. 313B, Tel. 301-496-7516.	June 7-9	8:30	L'Meridian Hotel, New Orleans, LA
Bio-Organic & Natural Products Chemistry, Dr. Harold Radkte, Rm. 2A07, Tel. 301-496-7107.	June 21-23	8:30	Holiday Inn, Georgetown, DC.
Biophysical Chemistry, Dr. John B. Wolff, Rm. 236B, Tel. 301-496-7070.	June 7-9	8:30	St. James Hotel, Washington, DC
Bio-Psychology, Dr. A. Keith Murray, Rm. 220, Tel. 301-496-7058.	June 4-6	9:00	The Savoy Suites Hotel, Washington, DC
Cardiovascular, Dr. Gordon L. Johnson, Rm. 439A, Tel. 301-496-7316.	June 13-15	8	Holiday Inn Crowne Plaza, Rockville, MD.
Cardiovascular & Renal, Dr. Anthony Chung, Rm. 321, Tel. 301-496-7901.	June 11-13	8:30	Holiday Inn, Capitol Hill, Washington, DC
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, Rm. 336, Tel. 301-496-7396.	June 6-8	8	American Inn, Bethesda, MD.

Study section	June 1990 meetings	Time	Location	Study section	June 1990 meetings	Time	Location	Study section	June 1990 meetings	Time	Location
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, Rm. 304, Tel. 301-496-7681.	June 18-20	8:30	Holiday Inn, Bethesda, MD.	General Medicine A-2, Dr. Mushtaq Khan, Rm. 354B, Tel. 301-496-7140.	June 13-15	8	NIH Room 6, Bldg. 31C, Bethesda, MD.	Mammalian Genetics, Dr. Jerry Roberts, Rm. 349, Tel. 301-496-7271.	June 14-16	8:30	Holiday Inn, Bethesda, MD.
Chemical Pathology, Dr. Edmund Copeland, Rm. 322, Tel. 301-496-7078.	June 19-22	8	Holiday Inn Crowne Plaza, Rockville, MD.	General Medicine B, Dr. Daniel McDonald, Rm. 322, Tel. 301-496-7730.	June 6-8	8	The Savoy Suites Hotel, Washington, DC.	Medical Biochemistry, Dr. Alexander Liacouras, Rm. 318A Tel. 301-496-7517.	June 14-15	8:30	Hyatt Hotel, Arlington, VA.
Diagnostic Radiology, Dr. Catharine Wingate, Rm. 219B, Tel. 301-496-7650.	June 11-13	8:30	Hyatt Regency, Bethesda, MD.	Genetics, Dr. David Remondini, Rm. 349, Tel. 301-496-7271.	June 14-16	9	NIH Room 8, Bldg. 31C, Bethesda, MD.	Medicinal Chemistry, Dr. Ronald Dubois, Rm. 2A06, Tel. 301-496-7107.	June 20-22	8:30	Holiday Inn, Chevy Chase, MD.
Endocrinology, Dr. Harry Brodie, Rm. 333, Tel. 301-496-7346.	June 17-19	8:30	Omni Hotel, Atlanta, GA.	Hearing Research, Dr. Joseph Kimm, Rm. 1A03, Tel. 301-496-7494.	June 18-20	8:30	St. James Hotel, Washington, DC.	Metabolic Pathology, Dr. Marcelina Powers, Rm. 435, Tel. 301-496-5251.	June 26-28	8:30	Hyatt Regency, Bethesda, MD.
Epidemiology & Disease Control-1, Dr. Sooja Kim, Rm. 203C, Tel. 301-496-7246.	June 10-12	8:30	Lodge at Snowbird, UT.	Hematology-1, Dr. Clark Lum, Rm. 355A, Tel. 301-496-7508.	June 7-8	8	Hyatt Regency, Bethesda, MD.	Metabolism, Dr. Krish Krishnan, Rm. 339A, Tel. 301-496-7091.	June 11-13	8	Holiday Inn, Georgetown, DC.
Epidemiology & Disease Control-2, Dr. H.M. Stiles, Rm. 340, Tel. 301-496-7246.	June 10-12	8:30	Lodge at Snowbird, UT.	Hematology-2, Dr. Jerrold Fried, Rm. 355B, Tel. 301-496-7508.	June 20-22	8:30	Holiday Inn, Georgetown, DC.	Metallobiochemistry, Dr. Edward Zapolski, Rm. 310, Tel. 301-496-7733.	June 21-33	8:30	Omni Georgetown Hotel, Washington, DC.
Experimental Cardiovascular Sciences, Dr. Richard Peabody, Rm. 234, Tel. 301-496-7940.	June 13-15	8	Hyatt Regency, Bethesda, MD.	Human Development & Aging-1, Dr. Teresa Levitin, Rm. 303, Tel. 301-496-7025.	June 13-15	9	Holiday Inn, Chevy Chase, MD.	Microbial Physiology & Genetics-1, Dr. Martin Slater, Rm. 238, Tel. 301-496-7183.	June 11-13	8:30	Wind River Lodge, Estes Park, CO.
Experimental Immunology, Dr. Calbert Laing, Rm. A27, Tel. 301-496-7238.	June 13-15	8:30	Holiday Inn Georgetown, DC.	Human Development & Aging-2, Dr. Louis Quatrano, Rm. 305, Tel. 301-496-7640.	June 6-8	8:30	Holiday Inn, Bethesda, MD.	Microbial Physiology & Genetics-2, Dr. Gerald Liddel, Rm. 357, Tel. 301-496-7130.	June 4-6	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, Rm. 221, Tel. 301-496-7839.	June 27-29	8:30	Keystone Resort, Keystone, CO.	Human Development & Aging-3, Dr. Anita Sostek, Rm. 2A05, Tel. 301-496-8814.	June 25-27	8:30	The Intrigue, Washington, DC.	Molecular & Cellular Biophysics, Dr. Patricia Jost, Rm. 236A Tel. 301-496-7060.	June 14-16	8	One Washington Circle Hotel, Washington, DC.
Experimental Therapeutics-2, Dr. Marcia Litwack, Rm. 2A03, Tel. 301-496-8848.	June 28-29	8:30	Keystone Resort, Keystone, CO.	Human Embryology & Development, Dr. Arthur Hoversland, Rm. 319A, Tel. 301-496-7597.	June 18-19	8:30	The Savoy Suites Hotel, Washington, DC.	Molecular Biology, Dr. Ramesh Nayak, Rm. 328, Tel. 301-496-7830.	June 14-16	8:30	Holiday Inn, Georgetown, DC.
Experimental Virology, Dr. Garrett V. Keefer, Rm. 206, Tel. 301-496-7474.	June 11-13	8:30	NIH Room 8, Bldg. 31C, Bethesda, MD.	Immunobiology, Dr. William Stylos, Rm. A27, Tel. 301-496-7780.	June 20-22	8:30	Holiday Inn, Chevy Chase, MD.	Molecular Cytology, Dr. Ramesh Nayak, Rm. 233B, Tel. 301-496-7149.	June 7-9	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
General Medicine A-1, Dr. Harold Davidson, Rm. 354A, Tel. 301-496-7797.	June 25-27	8	NIH Room 6, Bldg. 31C, Bethesda, MD.	Immunological Sciences, Dr. Anita Corman Weinblatt, Rm. A25, Tel. 301-496-2751.	June 26-28	8:30	Holiday Inn, Georgetown, DC.	Neurological Sciences-1, Dr. Samuel Rawlings, Rm. 319A Tel. 301-496-7279.	June 13-15	8:00	Washington Hotel, Washington, DC.
								Neurological Sciences-2, Dr. Stephen Gobel, Rm. 1A05, Tel. 301-496-8808.	June 12-14	8:00	Holiday Inn, Georgetown, DC.

Study section	June 1990 meetings	Time	Location	Study section	June 1990 meetings	Time	Location	Study section	June 1990 meetings	Time	Location
Neurology A, Dr. Jane Hu, Rm. 303A, Tel. 301-496-7506.	June 26-28	8:30	Holiday Inn Crowne Plaza, Rockville, MD.	Physical Biochemistry, Dr. Gopa Rakhit, Rm. 218B, Tel. 301-496-7120.	June 18-20	8:30	Holiday Inn, Georgetown, DC.	Virology, Dr. Belinda Seto, Rm. 309 Tel. 301-496-7605.	June 13-15	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
Neurology B-1, Dr. Jo Ann McConnell, Rm. 152, Tel. 301-496-7846.	June 12-15	8:30	Washington Hotel, Washington, DC.	Physiological Chemistry, Dr. Stanley Burrous, Rm. 339B, Tel. 301-496-7837.	June 21-23	8:30	Holiday Inn, Bethesda, MD.	Visual Sciences A-1, Dr. Anita Suran, Rm. 207, Tel. 301-496-7000.	June 27-29	8:00	Holiday Inn, Bethesda, MD.
Neurology B-2, Dr. Herman Teitelbaum, Rm. 152, Tel. 301-496-7422.	June 26-29	8:30	Holiday Inn, Chevy Chase, MD.	Physiology, Dr. Michael A. Lang, Rm. 209, Tel. 301-496-7878.	June 13-14	8:30	Marbury House Georgetown, DC.	Visual Sciences A-2, Dr. Samuel Rawlings, Rm. 319B, Tel. 301-496-7771.	June 20-22	8:30	Holiday Inn, Georgetown, DC.
Neurology C, Dr. Kenneth Newrock, Rm. 232, Tel. 301-496-5591.	June 27-30	8:30	Omni Georgetown Hotel, Washington, DC.	Radiation, Dr. Paul Strudler, Rm. 219A, Tel. 301-496-7073.	June 18-20	8:30	Westin Hotel, Washington, DC.	Visual Sciences B, Dr. Leonard Jakubczak, Rm. 325, Tel. 301-496-7251.	June 18-20	8:30	Omni Georgetown Hotel, Washington, DC.
Nursing Research, Dr. Gertrude McFarland, Rm. 352, Tel. 301-496-0558.	June 26-28	8:30	Holiday Inn, Crown Plaza, Rockville, MD.	Reproductive Biology, Dr. Dharam Dhindsa, Rm. 307, Tel. 301-496-7318.	June 6-9	8:30	Holiday Inn, Bethesda, MD.				
Nutrition, Dr. Ai Lien Wu, Rm. 204, Tel. 301-496-7178.	June 23-25	8:30	Hyatt Regency Hotel, Bethesda, MD.	Reproductive Endocrinology, Dr. Abubakar A. Shaikh, Rm. 325B, Tel. 301-496-8857.	June 17-19	8:00	Omni Hotel, Atlanta, GA.				
Oral Biology & Medicine-1, Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818.	June 11-14	8:30	Embassy Square Hotel, Washington, DC.	Respiratory & Applied Physiology, Dr. Everett Sinnett, Rm. 218A, Tel. 301-496-7320.	June 18-19	8:30	Holiday Inn, Bethesda, MD.				
Oral Biology & Medicine-2 Dr. J. Terrell Hoffeld, Rm. 325, Tel. 301-496-7818.	June 18-21	8:30	Embassy Square Hotel, Washington, DC.	Sensory Disorders & Language, Dr. Samuel Rawlings, Rm. 1A03, Tel. 301-496-7550.	June 27-29	8:30	Holiday Inn Capitol Hill, Washington, DC.				
Orthopedics & Musculoskeletal, Ms. Ileen Stewart, Rm. 350, Tel. 301-496-7581.	June 20-22	8:30	Holiday Inn Crowne Plaza, Rockville, MD.	Social Sciences & Population, Ms. Carol Campbell, Rm. 210, Tel. 301-496-7906.	June 7-9	9	River Inn, Washington, DC.				
Pathobiochemistry, Dr. Zakir Bengali, Rm. 320, Tel. 301-496-7381.	June 21-23	8:30	Brookline Holiday Inn, Boston, MA.	Surgery & Bioengineering, Dr. Paul F. Parakkal, Rm. 322, Tel. 301-496-7027.	June 14-15	8:30	Holiday Inn, Bethesda, MD.				
Pathology A, Dr. Houston Baker, Rm. 337, Tel. 301-496-7305.	June 12-15	7 p.m.	Guest Quarters Suite Hotel, Bethesda, MD.	Surgery, Anesthesiology & Trauma, Dr. Keith Kraner, Rm. 319B, Tel. 301-496-7771.	June 20-22	8:30	Holiday Inn, Bethesda, MD.				
Pathology B, Dr. Martin Padarathsingh, Rm. 352, Tel. 301-496-7244.	June 6-8	8	Holiday Inn, Georgetown, DC.	Toxicology, Dr. Alfred Marozzi, Rm. 205, Tel. 301-496-7570.	June 20-22	8:00	Holiday Inn, Bethesda, MD.				
Pharmacology, Dr. Joseph Kaiser, Rm. 206, Tel. 301-496-7408.	June 20-22	8:30	American Inn, Bethesda, MD.	Tropical Medicine & Parasitology, Dr. Jean Hickman, Rm. 334, Tel. 301-496-1190.	June 13-15	8:30	American Inn, Bethesda, MD.				

(Catalog of Federal Domestic Assistance Programs Nos. 13.306, 13.333, 13.337, 13.393-13.396, 13.837-13.844, 13.846-13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: May 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-11269 Filed 5-14-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-090-00-6310-10: GPO-227]

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, June 15, beginning at 9 a.m. at the Coast Range Resource Area Office, 1144 Gateway Loop, Eugene, Oregon.

The agenda of the meeting will include: A review of the northern spotted owl status and impacts on the 1990 timber management program, an update on the resource management planning process, and other topics that may be determined later.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must notify the District Manager, Bureau of Land Management, 1255 Pearl Street, Eugene, Oregon 97401 by the end of the business day on Wednesday, June 13, 1990. A time limit per person may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and

will be available for public inspection and reproduction during regular business hours within 30 days of the meeting.

Dated: May 7, 1990.

Ronald Kaufman,
District Manager.

[FR Doc. 90-11242 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Receipt of Application for Permit

The City of Marysville, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a) of the Endangered Species Act. The proposed permit would authorize the incidental take of the threatened species: valley elderberry longhorn beetle (*Desmoceros californicus dimorphus*) during construction of effluent disposal ponds. Elderberry shrubs, both occupied and potentially occupied by this threatened species occur in a linear strip approximately 900 feet long and altogether occupy less than 0.1 acre.

A draft environmental assessment (EA) has been prepared.

Documents and other information submitted with this application are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) in Room 430, 4401 North Fairfax Drive, Arlington, Virginia or by writing to: Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203.

Interested persons may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Comments regarding the adequacy of the EA should be addressed to Mr. Wayne S. White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Station, 2800 Cottage Way, Room 1823, Sacramento, California 95824-1846. Please refer to the file number, PRT 748819, when submitting comments.

Dated: May 9, 1990.

Karen Willson,
Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-11210 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the

Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 749163.

Applicant: Moscow Circus c/o Circus Productions, New York, NY

The applicant requests a permit to purchase in interstate commerce and export 2 male and 2 female Bengal tigers (*Panthera tigris tigris*) for purposes of breeding and display. The tigers will be purchased from the breeder, Josep Marcan, Adriatic Animal Attractions, Inc., Orlando, Florida, and exported to Russia.

PRT 746436.

Applicant: Rudolf Mattoni, Beverly Hills, CA

The applicant requests a permit to take less than 100 pupae of El Segundo blue butterflies [*Euphilotes* (= *Shijimiaeoides*) *battoides allyni*] at Los Angeles Airport, Los Angeles County, California, and incubate them under controlled conditions to document the number of parasitized specimens; and dig up, examine and rebury 100 additional pupae. The applicant also requests authorization to transfer approximately 200 pupae to a site at Playa del Rey, Los Angeles County, upon restoration of that site with suitable food plants. These actions are proposed for enhancement of propagation and survival of the species.

PRT 748818.

Applicant: Jack McCrary, Houston, TX

The applicant requests a permit to import one sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by V.L. Pringle, Bedford, Cape Province, Republic of South Africa, for enhancement of propagation and survival of the herd.

PRT 748817.

Applicant: Suzanne McCrary, Houston, TX

The applicant requests a permit to import one sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by V.L. Pringle, Bedford, Cape Province, Republic of South Africa, for enhancement of propagation and survival of the herd.

PRT 748198.

Applicant: Lube Foundation, Inc., Gainesville, FL

The applicant requests a permit to import five pairs of captive born Rodrigues fruit bats (*Pteropus rodricensis*) from the Jersey Wildlife Preservation Trust, Jersey, Channel Islands, and the Zoological Society of London, London, England, for scientific and educational purposes and possible breeding.

PRT 748218.

Applicant: The Peregrine Fund, Inc., Boise, ID

The applicant requests a permit to export up to 20 captive-hatched Mauritius kestrels (*Falco punctatus*) to Mauritius for release purposes.

PRT 748441.

Applicant: Robert N. Skuse, Alpena, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive-herd maintained by Mr. J.B. Pohl, Shenfield, P O Riebeeck East, Cape Province, South Africa, for the purpose of enhancement of survival of the species.

PRT 748224.

Applicant: International Animal Exchange, Inc., Ferndale, MI

The applicant requests a permit to export two captive born male entellus langurs (*Presbytis entellus thersites*) to Monkey Center, Taipei, Taiwan, for the purpose of enhancement of propagation or survival of the species.

PRT 673039.

Applicant: Bucky Steel, Jefferson, TX

The applicant requests a permit to export/reimport three female Asian elephants (*Elephas maximus*) to Canada for the purpose of enhancement of propagation and survival of the species. One male Asian elephant currently held in Canada for breeding purposes may be reimported and reexported in the future for breeding purposes. The three females may also be reexported and reimported in the future for the purposes mentioned above.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 a.m. to 4:15 p.m.) in Room 430, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: May 9, 1990.

Karen Willson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-11211 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-55-M

Availability of the Draft Environmental Assessment for the Proposed Transfer of Carolina Sandhills Wildlife Management Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environment assessment for the proposed transfer of Carolina Sandhills Wildlife Management Area, Chesterfield and Darlington Counties, South Carolina.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has prepared a Draft Environmental Assessment to consider biological, environmental, and socioeconomic effects of transferring land to the State of South Carolina.

Draft legislation (S. 2895 and H.R. 5514) proposes that the U.S. Fish and Wildlife Service transfer fee simple title to approximately 45,000 acres known as the Carolina Sandhills Wildlife Management Area to the State of South Carolina to be administered by the South Carolina Forestry Commission as the Sand Hills State Forest. The South Carolina Forestry Commission has under a long-term cooperative agreement protected, developed, and managed the area as Sand Hills State Forest since 1939, after the federal government acquired the property under the authorization of Title 11 of the National Industrial Recovery Act (48 Stat. 200), the Emergency Relief Appropriation Act (49 Stat. 115), and Title 111 of the Bankhead-Jones Farm Tenant Act (50 Stat. 522-525). Written comments or recommendation concerning the assessments are welcomed, and should be sent to the address below.

DATES: The Draft Environmental Assessment will be available to the public on May 15, 1990. Written comments must be received by June 15, 1990.

ADDRESSES: Comments should be addressed to: Mr. James W. Pulliam, Jr., Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street SW., Room 1200, Atlanta, Georgia 30303. Requests for copies of the assessment and further information should be directed to Mr. Bill Grabill, U.S. Fish and Wildlife Service, 75 Spring Street SW., Room 1240, Atlanta, Georgia 30303, telephone (404) 331-0830.

SUPPLEMENTARY INFORMATION: Draft legislation proposes that fee simple title to the Carolina Sandhills Wildlife Management Area (Sand Hills State Forest) be transferred to the South Carolina Forestry Commission from the

U.S. Fish and Wildlife Service. This property is owned by the U.S. Department of the Interior and has been managed under a Cooperative and License Agreement by the South Carolina Forestry Commission since its inception in 1939. The agreement call for the State government to operate and manage the property as a State forest and public shooting grounds in cooperation with federal government for the mutual benefit and benefit of the people of the State and of the United States. Further provisions of the agreement call for the State to prepare annual plans and reports detailing needs, objectives, and accomplishments. The Department of the Interior is charged with the responsibility of analyzing and approving plans. Income and revenue from the use of the property is expended for the purposes mutually agreed upon by the United States and the South Carolina Forestry Commission.

This provides a somewhat cumbersome system of management. Both agencies agree that portions of the agreement do not contribute to current operations since the major development work for the land has been modified over the years, and the basic document does not address current public needs and concerns. Transfer of title would allow each agency to pursue its objectives free of duplicative and outdated requirements.

In the Environmental Assessment, five alternatives and their potential impacts are evaluated. These are: Alternative I, Transfer of title of Sand Hills State Forest to South Carolina Forestry Commission for continued management as a State Forest (Preferred Alternative); Alternative II, No Action; Alternative III, Continued Management Under a Modified Cooperative and License Agreement; Alternative IV, Assumption of Direct Management of Sand Hills State Forest by Fish and Wildlife Service as an Expansion of Carolina Sandhills National Wildlife Refuge; and Alternative V, Acquisition of Sand Hills State Forest by Others. The Service believes the preferred alternative, Alternative I, will provide for more efficient operation and management of the area in furtherance of the goals outlined in the original agreement of 1939, and other public purposes as described in the proposed legislation.

Dated: April 24, 1990.

James W. Pulliam, Jr.,
Regional Director.

[FR Doc. 90-11273 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

San Francisco Maritime National Historical Park General Management Plan; Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, the National Park Service is preparing an environmental impact statement to assess the impacts of proposals and alternatives to be sent forth in the proposed General Management Plan for the San Francisco Maritime National Historical Park. Major issues to be addressed in the plan and environmental statement include plans for preservation of each historic vessel, including associated docking and repair facilities, plans for public facilities and plans for the interpretation of the historic vessels and park collections.

Persons wishing to provide initial scoping comments on the plan and environmental statement or needing additional information should address such comments or inquiries to the Superintendent, San Francisco Maritime National Historical Park, Bldg. 201 Fort Mason, San Francisco, CA 94123. Comments should be received no later than 60 days from the publication date of this notice. Also, it is anticipated that public scoping sessions will be held at a future date to be announced and an additional scoping comment period will be opened at that time.

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft plan and environmental assessment are expected to be available for public review in Fall, 1991. The final plan and environmental statement and Record of Decision are expected to be completed approximately one year later.

Dated: May 2, 1990.

Stanley T. Albright,
Regional Director, Western Region.
[FR Doc. 90-11226 Filed 5-14-90; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 5, 1990. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 30, 1990.

Carol D. Schull,

Chief of Registration, National Register.

ALASKA

Anchorage Borough-Census Area

A.E.C. Cottage No. 23, 618 Christensen Dr., Anchorage, 90000825

ARIZONA

Maricopa County

Webster Auditorium, 1201 N. Galvin Pkwy., Phoenix, 90000823

FLORIDA

Brevard County

St. Luke's Episcopal Church and Cemetery, Old, 5555 N. Tropical Trail, Courteney, 90000848

Wakulla County

Sopchoppy High School Gymnasium, Old, Jct. of Second Ave. & Summer St., Sopchoppy, 90000849

MONTANA

Lewis and Clark County

Helena Historic District (Boundary Increase/Decrease), Roughly bounded by Park Ave., Neill Ave., & Cruse Ave., Helena, 90000852

NORTH CAROLINA

Catawba County

Highland School, 1017 10th Ave. NE., Hickory, 90000824

Davie County

Downtown Mocksville Historic District, Roughly Main St. from Water to Gaither Sts., including Town Square, Mocksville, 90000821

North Main Street Historic District, Roughly Main St. from Church St. to Mocksville city limits, Mocksville, 90000822

Salisbury Street Historic District, Roughly Salisbury St. from Kelly St. to Lexington Rd., Mocksville, 90000819

Halifax County

Garner Farm, Jct. of NC 125 and 195, Days Crossroads vicinity, 90000826

OHIO

Cuyahoga County

McDonald's Drive-in, 988 E. 152nd St., Cleveland, 90000851

Fairfield County

Rock Mill, Jct. of Rock Mill Rd. and the Hocking R., Lancaster vicinity, 90000850

OREGON

Benton County

King, Charles, House, 22930 Harris Rd., Philomath vicinity, 90000833

Clackamas County

Bates, John M. and Elizabeth, House No. 3 (Wade Pipes Residences for John and Elizabeth Bates MPS), 16884 SW. Bryant Rd., Lake Oswego, 90000831

Bates, John M. and Elizabeth, House No. 4 (Wade Pipes Residences for John and Elizabeth Bates MPS), 4101 South Shore Blvd., Lake Oswego, 90000832

Bates, John M. and Elizabeth, House No. 2 (Wade Pipes Residences for John and Elizabeth Bates MPS), 16948 SW. Bryant Rd., Lake Oswego, 90000847

Mathieson-Worthington House, 865 McVey Ave., Lake Oswego, 90000837

Wilson, Andrew P., House, 11188 SE. 27th Ave., Milwaukie, 90000838

Clatsop County

Astoria Elks Building, 453 Eleventh St., Astoria, 90000843

Hood River County

Valley Theater, 4945 Baseline Rd., Parkdale, 90000842

Jackson County

Anderson, Thomas N., House, 719 Second Ave., Gold Hill, 90000845

Barclay-Klum House, 102 E. Main St., Ashland, 90000835

Cargill Court Apartments, 331 W. Sixth St., Medford, 90000836

Medford County

Gilliam and Bisbee Building, SE. corner of Main and May Sts., Heppner, 90000840

Multnomah County

Bates, John M. and Elizabeth, House No. 1 (Wade Pipes Residences for John and Elizabeth Bates MPS), 1837 SW. Edgewood Rd., Portland, 90000846

Ducey, Elizabeth, House, 2773 NW. Westover Rd., Portland, 90000839

Gatehouse, Portland City Reservoir No. 2, 6007 SE. Division St., Portland, 90000834

Knights of Columbus Building, 804 SW. Taylor St., Portland, 90000830

Multnomah County Poor Farm, 2126 SW. Halsey St., Troutdale, 90000844

Nichols, Dr. Herbert S., House, 1925 SW. Vista Ave., Portland, 90000829

Rosenberg, Dr. J. J., House, 1792 SW. Montgomery Dr., Portland, 90000828

Polk County

West Salem City Hall, Old, 1320 Edgewater St. NW., Salem, 90000841

Wasco County

Heimrich-Seufert House, 303 E. Tenth St., The Dalles, 90000827

WISCONSIN

Rock County

South Main Street Historic District, Roughly S. Main St. from Milwaukee St. to Rock Co. Courthouse grounds and E. Court St. from Parker Dr. to Rock R., Janesville, 90000820

The 15-day commenting period has been waived for the following property:

MICHIGAN

St. Clair Co.

St. Clair Flats South Channel Range Lights 0.6 mi. W of southern tip of Harsens Island Algonac vicinity, 90000853

[FR Doc. 90-11225 Filed 5-14-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under Clean Water Act and RCRA

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 3, 1990, a proposed consent decree in *United States v. Penntech Papers, Inc.*, Civil Action No. 87-183E, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed consent decree resolves a judicial enforcement action brought by the United States against Penntech Papers, Inc. ("Penntech") under sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, and sections 3005 and 3010 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6925 and 6930.

In this action filed on August 4, 1987, the United States sought injunctive relief and civil penalties against Penntech for discharging wastewaters in violation of the effluent limitations in its NPDES permit issued by the Commonwealth of Pennsylvania and for discharging hazardous wastes into a surface impoundment without a RCRA permit and without having obtained interim status. The proposed consent decree, among other things, requires Penntech to construct a state-of-the-art wastewater treatment plant and to pay a civil penalty of \$1.1 million, to be divided equally between the United States and intervenor plaintiff, the Commonwealth of Pennsylvania.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Penntech Papers, Inc.*, D.J. Ref. 90-5-1-1-2825.

The proposed consent decree may be examined at the office of the United States Attorney, 633 U.S. Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, PA 15219, and at the Region III office of the United States Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107. The decree may also be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the

Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$5.00 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,
Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-11191 Filed 5-14-90; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Design Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on June 15, 1990, from 9 a.m.-6:30 p.m. and on June 16 from 9 a.m.-1:30 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 15 from 9 a.m.-6:30 p.m. and on June 16 from 9 a.m.-11 a.m. and from 12:30 p.m.-1:30 p.m. The topics for discussion will be built environment issues, design arts initiatives, FY 92 guidelines & the state of the arts, and future recommendations.

The remaining portion of this meeting on June 16 from 11 a.m.-12:30 p.m. is for the purpose of Panel review of the FY 91 budget. In accordance with the determination of the Chairman executed on May 6, 1990, OMB Circular A-10 specifies that matters relating to a Presidential budget under review and development by the Office of Management and Budget are of a confidential nature, and may not be disclosed prior to public disclosure incident to the President's transmittal of the proposed Executive Branch Budget to Congress. Therefore, this session will be closed to the public pursuant to subsection (c)(9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 7, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 90-11192 Filed 5-14-90; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Public Partnership Office Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Locals Program Section) to the National Council on the Arts will be held on June 4-6, 1990, from 9 a.m.-5:30 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on June 4 from 9 a.m.-5:30 p.m., June 5 from 9 a.m.-2 p.m., and on June 6 from 9 a.m.-1:30 p.m. and from 3:15 p.m.-5:30 p.m. The topics will be application review, and guidelines and policy issues.

The portion of this meeting on June 5 from 2 p.m.-5:30 p.m. is for the purpose of Panel recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(9)(B) of § 552b of title 5, United States Code.

The portion of the meeting on June 6 from 1:30 p.m.-3:15 p.m. is for the purpose of panel review, discussion, evaluation and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of § 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 7, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 90-11193 Filed 5-14-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440]

Cleveland Electrical Illuminating Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 29 to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company (the licensees), which revised the Technical Specifications for operation of the Perry Nuclear Power Plant Unit No. 1, located in Lake County, Ohio. The amendment was effective as of the date of issuance.

The amendment modified the Technical Specifications (TS) to revise the Setpoint and Allowable Values for the Turbine First Stage Pressure Trip in notes (h) and (b) of Tables 3.3.1-1 and 3.3.4.2-1 of the TS.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on March 30, 1990 (55 FR 12075). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not

have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated May 20, 1988, as supplemented November 27, 1989, (2) Amendment No. 29 to License No. NPF-58, (3) the Commission's related Safety Evaluation dated May 7, 1990, and (4) the Environmental Assessment dated April 27, 1990 (55 FR 18990). All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 7th day of May 1990.

For the Nuclear Regulatory Commission,
John N. Hannon,
Director, Project Directorate III-3, Division of
Reactor Projects—III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 90-11262 Filed 5-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Proposed no Significant Hazards Consideration Determination

On December 5, 1989, the U.S. Nuclear Regulatory Commission (the Commission) published in the *Federal Register* a notice announcing consideration of issuance of license amendments to revise the Technical Specifications (TS) for Turkey Point Units 3, and 4, Florida Power and Light Company, Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing, V. 54, FR 50295 (December 5, 1989).

The Commission is considering issuance of amendments to Facility Operating License Nos. DPR-31 and DPR-41 issued to Florida Power and Light Company (FPL, the licensee) for operation of the Turkey Point Plant,

Units 3 and 4, located in Dade County, Florida. The Commission is now issuing its Notice of Proposed No Significant Hazards Consideration in accordance with 10 CFR 50.91 and 50.92.

The proposed amendments would replace the current (custom) Technical Specifications (CTS), which are part of the license issued in the early 1970's, with a set of revised Technical Specifications (RTS) based on the staff's Standard Technical Specifications (STS) for Westinghouse-designed reactors. The CTS and the RTS consist of 6 parts as follows:

- Part 1—Definitions
- Part 2—Safety Limits and Limiting Safety Settings
- Part 3—Limiting Conditions for Operation (LCOs)
- Part 4—Surveillance Requirements
- Part 5—Design Features
- Part 6—Administrative Controls

It should be noted in reading the RTS that Parts 3 and 4 are presented as an integrated unit, so that the LCO and the surveillance requirement for a given plant system (or TS Section) are presented together, system by system (or Section by Section).

The licensee's amendment application (the Application) submitted on June 5, 1989, as supplemented on November 3, 1989, and May 1, 1990, included four attachments. Attachment I includes the proposed RTS and revised bases to support the RTS. Attachment II is the licensee's safety evaluation, and Appendix A of Attachment II is a supplement to the safety evaluation and provides the No Significant Hazards Evaluation. Attachment III identifies FSAR changes planned to keep the FSAR and RTS consistent with each other. Attachment IV identifies certain safety improvements, in response to separate NRC initiatives, which will be implemented as a result of implementing the RTS. Attachment IV was provided to assist the NRC in tracking progress on these other initiatives.

Throughout Appendix A of Attachment II to the Application, the licensee has characterized the proposed TS changes as: (1) Administrative (non-technical), (2) more restrictive or more complete, (3) relaxations, and (4) deletion of selected requirements.

Administrative changes are non-technical in nature and are intended to make the TS easier to use for plant operations personnel.

More restrictive or more complete requirements are either more conservative than corresponding requirements in the CTS, or are additional restrictions which are not in the CTS. The more restrictive or more complete requirements provide a safety enhancement.

Any relaxations of selected existing requirements are based on many reactor-years of operating experience in the nuclear reactor industry. Requirements which are known to provide little or no safety benefit are counterproductive and may justifiably be eased or removed from the CTS. In many cases the relaxed requirements already exist in the STS and have previously been issued in TS for other plants.

Deletion of selected requirements is described on page G-1 of Appendix A of Attachment II of the Application. Deletions consist of: (1) Requirements determined not to be needed for safety purposes, and (2) requirements which already exist in some other controlled document.

In the supplemental document submitted by the licensee on May 1, 1990, the changes evaluated for No Significant Hazards Consideration (Appendix A of Attachment II of the Application) are summarized and organized into tabular form. The table, entitled "Categorization of Changes to the Current Tech Specs" is provided here for clarification as Table I. The table includes no new information, but lists and organizes all the changes. The first column of the table lists the new RTS section that results from the changes to the CTS. The second column of the table lists the CTS sections being changed. The third column lists the page reference in Appendix A of Attachment II of the Application where the changes are described and evaluated for No Significant Hazards Considerations. The last four columns list the changes, by category, using the notation from Appendix A.

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
1.0	1.0 and Table 4.1-1	1-1 thru 1-3	A.2)a.1,2,3,4,5,6, .. A.2)2a.7,8,9,10,11	A.2)b.	None	A.2)c.1,2,3,4,5,6,7,8 A.2)c.9,10,11,12,13.
1.17	1.4, 3.05, and B3.05	1-4 thru 1-7	A.2	A.2)	A.2)	None.

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.—Continued

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
2.1.1	1.1, 2.1 and B2.1	2-1 thru 2-2	A.2).a	A.2)b.1,2	None	None.
2.1.2	1.1, 2.2, and B2.2	2-3 thru 2-4	A.2).a	A.2)b.	None	None.
2.2.1	2.3	2-5 thru 2-7	A.2).a	A.2)b.1,2	A.2).c.	None.
3/4.0	3.0, 4.0, and B3.0	3/4 0-1 thru 3/4 0-4	A.2).a	A.2)b.1	A.2).c.1,2	None.
4.0.1 and Mode Issues	Throughout Specs.	3/4 0-5 thru 3/4 0-7	A.2).a	None	A.2)b.	None.
3/4.1.1.1	3.2.1.f, 3.2.4.c, Table 4.1-2, Item 1.e, 4.11, and 6.9.3.m.	3/4 1-1 thru 3/4 1-4	A.2).a	A.2)b.1,2,3	A.2).c.1,2,3	None.
3/4.1.1.2	Table 4.1-2 item 1.e	3/4 1-5 thru 3/4 1-6	A.2).a	A.2)b.1,2,3	None	None.
3/4.1.1.3	3.1.2.1	3/4 1-7 thru 3/4 1-8	A.2).a	A.2)b.	None	None.
3/4.1.1.4	None, Adds New Specification.	3/4 1-9 thru 3/4 1-10	A.2).a	A.2)b.	None	None.
3/4.1.2.1	3.6.a, Table 4.1-1 item 19, and Table 4.18-1 item 8.	3/4 1-11 thru 3/4 1-13	A.2).a	A.2)b.1,2	A.2).c.	None.
3/4.1.2.2	3.6.a, 3.6.b.2, 3.6.b.4, 3.6.c.2, 3.6.c.4, 3.6.d.2, and Table 4.18-1 item 8.	3/4 1-14 thru 3/4 1-18	A.2).a	A.2)b.1,2	A.2).c.1,2,3,4,5	None.
3/4.1.2.3	3.6.b.1, 3.6.c.1, 3.6.d.1, and Table 4.1-1 items 12 and 16.	3/4 1-19 thru 3/4 1-21	A.2).a	A.2)b.1,2,3	A.2).c.1,2,3	None.
3/4.1.2.4	Table 4.1-1 item 14 and Table 4.1-2 item 3.	3/4 1-22 thru 3/4 1-24	A.2).a	A.2)b.1,2,3	A.2).c.1,2	None.
3/4.1.2.5	3.4.1.a.1, 3.6.b.3, 3.6.b.6, 3.6.c.3, 3.6.c.6, and Table 4.1-2 items 2 and 3.	3/4 1-25 thru 3/4 1-29	A.2).a	A.2)b.1,2,3	A.2).c.1,2,3	None.
3/4.1.2.6	3.6.b.5, 3.6.c.5, 3.6.d, and Table 4.18-1 item 8.	3/4 1-30 thru 3/4 1-32	A.2).a	A.2)b.1,2	A.2).c.	None.
3/4.1.3.1	3.2.2, 3.2.4a, 3.2.4b, 3.2.5 and Table 4.1-2 item 5.	3/4 1-33 thru 3/4 1-36	A.2).a	A.2)b.1,2,3	A.2).c.1,2,3,4,5	None.
3/4.1.3.2	3.2.5, and Table 4.1-1 items 9 and 10.	3/4 1-37 thru 3/4 1-39	A.2).a	A.2)b.1,2	A.2).c.1,2	None.
3/4.1.3.3	Table 4.1-1 item 9	3/4 1-40 thru 3/4 1-41	A.2).a	A.2)b.1,2,3	None	None.
3/4.1.3.4	3.2.3 and Table 4.1-2 item 5.	3/4 1-42 thru 3/4 1-43	A.2).a	A.2)b.1,2	None	None.
3/4.1.3.5	3.2.1.a	3/4 1-44 thru 3/4 1-45	A.2).a	A.2)b.1,2,3	None	None.
3/4.1.3.6	3.2.1.b, 3.2.1.c, 3.2.1.d, 3.2.1.g.	3/4 1-46 thru 3/4 1-47	A.2).a	A.2)b.1,2	A.2).c.	None.
3/4.2.1	3.2.6.c thru 3.2.6.g and 3.2.8.	3/4 2-1 thru 3/4 2-3	A.2).a	A.2)b.1,2	A.2).c.	None.
3/4.2.2	3.2.6.a, 3.2.6.b, and Table 4.1-1 item 1b.	3/4 2-4 thru 3/4 2-5	A.2).a	None	A.2)b.	None.
3/4.2.3	3.2.6.a, 3.2.6.b, and Table 4.1-1 item 1b.	3/4 2-6 thru 3/4 2-8	A.2).a	A.2)b.	A.2).c.	None.
3/4.2.4	3.2.6h and 3.2.6i	3/4 2-9 thru 3/4 2-12	A.2).a	A.2)b.1,2,3,4	A.2).c.1,2	None.
3/4.2.5	3.1.6	3/4 2-13 thru 3/4 2-14	A.2).a	A.2)b.1,2,3	None	None.
3/4.3.1	3.5.1 and Table 4.1-1	3/4 3-1 thru 3/4 3-5	A.2).a	A.2)b.1,2	A.2).c.1,2,3,4,5	None.
3/4.3.2	3.5, Table 3.5-2, Table 3.5-3, Table 3.5-4, and Table 4.1-1.	3/4 3-6 thru 3/4 3-9	A.2).a	A.2)b.1,2,3,4	A.2).c.1,2,3	None.end page 1
3/4.3.3.1	Table 3.5-3 item 4, Table 3.5-4 item 10, Table 4.1-1 items 18A, 18B, 38a, 38b, and Table 3.5-5 items 13a and 13b.	3/4 3-10 thru 3/4 3-13	A.2).a	A.2)b.1,2,,3,4,5,6	A.2).c.1,2	None.
3/4.3.3.2	3.2.7	3/4 3-14 thru 3/4 3-15	A.2).a	A.2)b.1,2,3,4	None	None.
3/4.3.3.3	Table 3.5-5 items 1 thru 11 and 13 thru 15, Table 4.1-1 items 6, 15A, 15B, 16, 17A, 17B, 26, 27, 28, 29, 30, 34, 35, 36, 37, 38, 39, and 40.	3/4 3-16 thru 3/4 3-19	A.2).a.1,2	A.2)b.1,2	A.2).c.1,2	None.
3/4.3.3.4	3.14.1 and 4.15.1	3/4 3-20 thru 3/4 3-22	A.2).a	A.2)b.1	A.2).c.1,2	None.
3/4.3.3.5	3.9.1.C, Table 3.9-2, and Table 4.1-3.	3/4 3-23	A.2).a	None	None	None.
3/4.3.3.6	3.9.2.C, Table 3.9-3, Table 3.9-4, and Table 4.1-4.	3/4 3-24 thru 3/4 3-26	A.2).a	A.2)b.1,2,3,4, A.2)b.5,6,7	None	None.

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.—Continued

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
3/4.4.1.1.....	3.1.1.a.1, 3.1.1.a.3, 3.1.1.a.4, 3.4.1c, and Table 4.1-2 item 18.	3/4 4-1 thru 3/4 4-3.....	A.2).a.....	A.2).b.....	A.2).c.....	None.
3/4.4.1.2.....	3.1.1.a.2, 3.4.1.d, and Table 4.1-2.	3/4 4-4 thru 3/4 4-5.....	A.2).a.....	A.2).b.....	None.....	None.
3/4.4.1.3.....	1.23, 3.1.1.a.2, 3.1.1.a.5, 3.4.1.e, and Table 4.1-2 item 18.	3/4 4-6 thru 3/4 4-7.....	A.2).a.....	A.2).b.....	None.....	None.
3/4.4.1.4.1.....	3.1.1.a.2, 3.1.1.a.5, 3.4.1.e, and Table 4.1-2 item 18.	3/4 4-8 thru 3/4 4-10.....	A.2).a.....	A.2).b.....	A.2).c.1,2,3.....	None.
3/4.4.1.4.2.....	3.1.1.a.2, 3.4.1.e, and Table 4.1-2 item 18.	3/4 4-11 thru 3/4 4-13.....	A.2).a.....	A.2).b.....	A.2).c.1,2.....	None.
3/4.4.2.1.....	3.1.1.c.1 Table 4.1-2 item 6, and B3.1.1.	3/4 4-14 thru 3/4 4-17.....	A.2).a.....	A.2).b.1,2,3,4.....	A.2).c.1,2,3.....	None.
3/4.4.2.2.....	3.1.1.c.2, Table 4.1-2 item 6, and B3.1.1.	3/4 4-18 thru 3/4 4-19.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.4.3.....	3.1.1.d.....	3/4 4-20 thru 3/4 4-21.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.4.4.....	3.1.1.e.1, 3.1.1.e.2, and 3.1.1.e.3.	3/4 4-22 thru 3/4 4-24.....	A.2).a.....	A.2).b.....	A.3).a..b.....	None.
3/4.4.5.....	4.2.5.....	3/4 4-25 thru 3/4 4-26.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.4.6.1.....	3.1.3.f, B3.1.3, Table 4.1-1 item 20.	3/4 4-27 thru 3/4 4-30.....	A.2).a.....	A.2).b.1,2,3.....	A.2).c.....	None.
3/4.4.6.2.....	3.1.3a, 3.1.3b, 3.1.3c, 3.1.3d, 3.1.3e, 3.1.3g, 3.1.6, 4.1.7, and Table 4.1-2 item 11.	3/4 4-31 thru 3/4 4-34.....	A.2).a.....	A.2).b.1,2,3,4,5.....	A.2).c.1,2,3.....	None.
3/4.4.7.....	3.1.5 and Table 4.1-2 item 1b.	3/4 4-35 thru 3/4 4-37.....	A.2).a.....	A.2).b.1,2.....	A.2).c.....	None.
3/4.4.8.....	3.1.4, B3.1.4, and Table 4.1-2 item 1.	3/4 4-38 thru 3/4 4-40.....	A.2).a.....	A.2).b.1,2.....	A.2).c.1,2.....	None.
3/4.4.9.1.....	3.1.2, B3.1.2, 4.20, and B4.20.	3/4 4-41 thru 3/4 4-42.....	A.2).a.....	A.2).b.1,2.....	A.2).c.1.....	None.
3/4.4.9.2.....	3.1.2 and B3.1.2.....	3/4 4-43 thru 3/4 4-44.....	A.2).a.....	A.2).b.1,2.....	None.....	None.
3/4.4.9.3.....	3.1.5, 4.16, B3.15 and B4.15.	3/4 4-45 thru 3/4 4-47.....	A.2).a.....	A.2).b.1,2,3,4.....	None.....	None.
3/4.4.10.....	4.2 and 4.3.....	3/4 4-48 thru 3/4 4-49.....	A.2).a.....	A.2).b.....	None.....	None.
3/4.4.11.....	3.1.1.f, 4.19, B3.1.1 and B4.19.	3/4 4-50 thru 3/4 4-51.....	A.2).a.....	None.....	None.....	None.
3/4.5.1.....	3.4.1.a.3, 3.4.1.b.1, 4.5.2.b.3, Table 4.1-1 item 21, and Table 4.1-2 item 10.	3/4 5-1 thru 3/4 5-3.....	A.2).a.....	A.2).b.1,2,3,4,5.....	A.2).c.1,2.....	None.
3/4.5.2.....	3.4.1.a.4 thru 3.4.1.a.7, 3.4.1.b.2, 3.4.1.b.4 thru 3.4.1.b.7, 4.5.1, 4.5.2a, 4.5.2.b.1, 4.5.2.b.2, 4.5.2.b.4, and Table 4.18-1 items 1 and 2.	3/4 5-4 thru 3/4 5-9.....	A.2).a.....	A.2).b.1,2,3,4,5,6.....	A.2).c.1,2,3,4,5,6.....	None.
3/4.5.3.....	None, Adds New Specification.	3/4 5-10 thru 3/4 5-11.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.5.4.....	3.4.1.a.1 and Table 4.1-2 item 2.	3/4 5-12 thru 3/4 5-13.....	A.2).a.....	A.2).b.1,2,3.....	A.2).c.....	None.
3/4.6.1.1.....	3.3.1.....	3/4 6-1 thru 3/4 6-2.....	A.2).a.....	A.2).b.1,2,3.....	A.2).c.....	None.
3/4.6.1.2.....	4.4.1, 4.4.2, and 4.4.3.....	3/4 6-3 thru 3/4 6-4.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.6.1.3.....	3.3.4 and 4.4.2.....	3/4 6-5 thru 3/4 6-6.....	A.2).a.....	A.2).b.1,2,3.....	None.....	None.
3/4.6.1.4.....	3.3.2.....	3/4 6-7 thru 3/4 6-8.....	A.2).a.....	A.2).b.....	None.....	None.
3/4.6.1.5.....	None, Adds New Specification.	3/4 6-9 thru 3/4 6-10.....	A.2).a.....	None.....	None.....	None.
3/4.6.1.6.....	4.4.5, 4.4.6, and 4.4.7.....	3/4 6-11 thru 3/4 6-12.....	A.2).a.....	A.2).b.1,2,3,4,5,..... A.2).c.6,7,8.....	None.....	None.
3/4.6.1.7.....	3.3.3 and 4.4.2.....	3/4 6-13 thru 3/4 6-14.....	A.2).a.....	A.2).b.1,2,3,4,5.....	None.....	None.
3/4.6.2.1.....	3.4.2, 4.6, Table 4.18-1 item 4.	3/4 6-15 thru 3/4 6-18.....	A.2).a.....	A.2).b.1,2,3.....	A.2).c.1,2,3.....	None.
3/4.6.2.2.....	3.4.2 and 4.6.....	3/4 6-19 thru 3/4 6-21.....	A.2).a.....	A.2).b.1,2.....	A.2).c.1,2,3.....	None.
3/4.6.3.....	3.4.3a, 3.4.3b, and 4.7.....	3/4 6-22 thru 3/4 6-24.....	A.2).a.....	A.2).b.1,2,3,4.....	A.2).c.....	None.
3/4.6.4.....	3.3.3, B3.3.3, 4.4.3, and Table 4.2-1 item 8.	3/4 6-25 thru 3/4 6-26.....	A.2).a.....	A.2).b.1.....	None.....	None.
3/4.6.5.....	B4.18, Table 3.5-5 item 12, Table 4.1-1 item 37, and Table 4.18-1 item 11.	3/4 6-27 thru 3/4 6-29.....	A.2).a.....	A.2).b.1,2,3.....	A.2).c.....	None.
3/4.6.6.....	3.4.6, 4.7.2, and Table 4.18-1 item 9.	3/4 6-30 thru 3/4 6-31.....	A.2).a.....	A.2).b.....	A.2).c.....	None.
3/4.7.1.1.....	3.8.1a, B3.8, Table 4.1-2 item 7.	3/4 7-1 thru 3/4 7-3.....	A.2).a.....	A.2).b.1,2.....	A.2).c.1,2.....	None.

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.—Continued

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
3/4.7.1.2	3.18, 4.10, Table 4.18-1 item 3.	3/4 7-4 thru 3/4 7-6	A.2).a	A.2).b	A.2).c	None.
3/4.7.1.3	3.19, B3.19, and 4.22	3/4 7-7 thru 3/4 7-8	A.2).a	None	A.2).b	None.
3/4.7.1.4	3.8.2	3/4 7-9 thru 3/4 7-10	A.2).a	A.2).b.1,2,3	None	None.
3/4.7.1.5	3.8.1.b, 3.8.1.c, 3.8.3, 4.9, and B4.9.	3/4 7-11 thru 3/4 7-12	A.2).a	A.2).b.1,2	A.2).c	None.
3/4.7.1.6	3.20, 4.21, B3.20, and B4.21.	3/4 7-13 thru 3/4 7-14	A.2).a	A.2).b	None	None.
3/4.7.2	3.4.4, B3.4.4, and Table 4.18-1 item 6.	3/4 7-15 thru 3/4 7-18	A.2).a	A.2).b.1,2,3	A.2).c.1,2,3,4	None.
3/4.7.3	3.4.5, B3.4.5, and Table 4.18-1 item 7.	3/4 7-19 thru 3/4 7-22	A.2).a	A.2).b.1,2	A.2).c.1,2,3,4	None.
3/4.7.4	None, Adds New Specification.	3/4 7-23 thru 3/4 7-24	A.2).a	None	None	None.
3/4.7.5	3.4.7, 4.7.3, and B4.7	3/4 7-25 thru 3/4 7-27	A.2).a	A.2).b.1,2,3,4	A.2).c.1	None.
3/4.7.6	3.13 and 4.14	3/4 7-28 thru 3/4 7-29	A.2).a	A.2).b	None	None.
3/4.7.7	3.11, 4.13, and B3.11	3/4 7-30 thru 3/4 7-32	A.2).a	A.2).b.1,2	A.2).c	None.
3/4.7.8.1	3.14.2 and 4.15.2	3/4 7-33 thru 3/4 7-35	A.2).a	A.2).b.1,2,3	A.2).c.1,2	None.
3/4.7.8.2	3.14.3 and 4.15.3	3/4 7-36 thru 3/4 7-39	A.2).a	A.2).b.1,2,3	A.2).c.1,2	None.
3/4.7.8.3	3.14.4 and 4.14.4	3/4 7-40 thru 3/4 7-42	A.2).a	None	A.2).b.1,2	None.
3/4.7.8.4	None, Adds New Specification.	3/4 7-43 thru 3/4 7-44	A.2).a	None	A.2).c.None	None.
3/4.8.7.9	3.14.5 and 4.15.5	3/4 7-45 thru 3/4 7-47	A.2).a	A.2).b.1	A.2).c.1,2	None.
3/4.8.1.1	3.7, 4.8.1, B3.7, B4.8, Table 4.8-1, Table 4.1-2 item 12 and Table 4.18-1 item 5.	3/4 8-1 thru 3/4 8-9	A.2).a.1	A.2).b.1,2,3,4, A.2).b.5,6,7,8, A.2).b.9,10,11,12	A.2).c.1,2,3, A.2).c.4,5,6,7	None.
3/4.8.1.2	None, Adds New Specification.	3/4 8-10	A.2).a	None	None	None.
3/4.8.2.1	3.7, 4.8.2, B3.7, and B4.8.	3/4 11-8 thru 3/4 8-14	A.2).a	A.2).b.1,2,3	A.2).c.1,2	None.
3/4.8.2.2	None, Adds New Specification.	3/4 8-15	A.2).a	None	None	None.
3/4.8.3.1	3.7, B3.7, Table 4.18-1 item 10.	3/4 8-16 thru 3/4 8-18	A.2).a	A.2).b.1,2,3,4,5,6	A.2).c.1	None.
3/4.8.3.2	None, Adds New Specification.	3/4 8-19	A.2).a	None	None	None.
3/4.9.1	3.10.8, B3.10.8, and Table 4.1-2 item 13.	3/4 9-1 thru 3/4 9-2	A.2).a	A.2).b.1,2	A.2).c	None.
3/4.9.2	3.10.3, B3.10.3, and Table 4.1-1 item 3.	3/4 9-3 thru 3/4 9-4	A.2).a	A.2).b.1,2	None	None.
3/4.9.3	3.10.5 and B3.10.5	3/4 9-5 thru 3/4 9-6	A.2).a	A.2).b	None	None.
3/4.9.4	3.10.1 and B3.10.1	3/4 9-7 thru 3/4 9-8	A.2).a	A.2).b	None	None.
3/4.9.5	3.10.6 and B3.10.6	3/4 9-9 thru 3/4 9-10	A.2).a	A.2).b	None	None.
3/4.9.6	Table 4.1-2 item 9	3/4 9-11 thru 3/4 9-12	A.2).a	A.2).b.1,2,3,4,5	A.2).c	None.
3/4.9.7	3.10.9 and B3.10.9	3/4 9-13 thru 3/4 9-14	A.2).a	A.2).b	None	None.
3/4.9.8.1	3.10.7.1, B3.10.7, Table 4.1-1 item 13, and Table 4.1-2 item 18.	3/4 9-15 thru 3/4 9-17	A.2).a	A.2).b	A.2).c	None.
3/4.9.8.2	3.10.7.2, B3.10.7, and Table 4.1-2 item 18.	3/4 9-18 thru 3/4 9-20	A.2).a	A.2).b	A.2).c	None.
3/4.9.9	3.10.2, B3.10.2, and Table 4.1-2 item 8.	3/4 9-21 thru 3/4 9-22	A.2).a	A.2).b	None	None.
3/4.9.10	None, Adds New Specification.	3/4 9-23 thru 3/4 9-24	A.2).a	A.2).b	None	None.
3/4.9.11	None, Adds New Specification.	3/4 9-25 thru 3/4 9-26	A.2).a	A.2).b	None	None.
3/4.9.12	3.12, B3.12, Table 4.1-2 item 17.	3/4 9-27 thru 3/4 9-28	A.2).a	A.2).b	None	None.
3/4.9.13	3.10.4, B3.10.4, and Table 4.1-1 item 18A.	3/4 9-29 thru 3/4 9-30	A.2).a	A.2).b.1,2	None	None.
3/4.9.14	3.17, B3.17, Table 4.1-2 item 13.	3/4 9-31 thru 3/4 9-32	A.2).a	A.2).b	None	None.
3/4.10.1	3.2.1f	3/4 10-1 thru 3/4 10-2	A.2).a	A.2).b	None	None.
3/4.10.2	3.2.1a, 3.2.1b, 3.2.1c, 3.2.6.d, and 3.2.6.h.	3/4 10-3 thru 3/4 10-4	A.2).a	A.2).b	None	None.
3/4.10.3	3.1.2.1, 3.2.1.a, 3.2.1.b, 3.2.1.c.	3/4 10-5 thru 3/4 10-6	A.2).a	A.2).b	None	None.
3/4.10.5	None, Adds New Specification.	3/4 10-7 thru 3/4 10-8	A.2).a	A.2).b	None	None.
3/4.11.1.1	3.9.1a, B3.9.1a, and Table 3.9-1.	3/4 11-1 thru 3/4 11-2	A.2).a	A.2).b	None	None.
3/4.11.1.2	3.9.1.b, 6.9.3e, and B3.9.1.b.	3/4 11-3 thru 3/4 11-4	A.2).a	None	None	None.
3/4.11.1.3	3.9.1.d, B3.9.1.d, and 6.9.3.f.	3/4 11-5 thru 3/4 11-6	A.2).a	None	None	None.

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.—Continued

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
3/4.11.2.1.....	3.9.2a, B3.9.2.a, and Table 3.9-3.	3/4 11-7 thru 3/4 11-8	A.2).a	None	None	None.
3/4.11.2.2.....	3.9.2b, B3.9.2b, and 6.9.3.e.	3/4 11-9 thru 3/4 11-10	A.2).a	None	A.2).b.	None.
3/4.11.2.3.....	3.9.2c, B3.9.2.c, and 6.9.3.e.	3/4 11-11 thru 3/4 11-12	A.2).a	None	None	None.
3/4.11.2.4.....	3.9.2e, B3.9.2e, and 6.9.3g.	3/4 11-13 thru 3/4 11-14	A.2).a	None	None	None.
3/4.11.2.5.....	3.9.2g, B3.9.2g, Table 3.9-4.	3/4 11-15 thru 3/4 11-16	A.2).a	None	None	None.
3/4.11.2.6.....	3.9.2f and B3.9.2f	3/4 11-17 thru 3/4 11-18	A.2).a	A.2).b.	None	None.
3/4.11.3.....	3.9.3 and B3.9.3	3/4 11-19 thru 3/4 11-20	A.2).a	A.2).b.	None	None.
3/4.11.4.....	3.9.2h, B3.9.2.h, and 6.9.3.h.	3/4 11-21 thru 3/4 11-22	A.2).a	A.2).b.	None	None.
3/4.12.1.....	4.12.1, B4.12.1 and 6.9.3i.	3/4 12-1	A.2).a	None	None	None.
3/4.12.2.....	4.12.2 and B4.12.2	3/4 12-2	A.2).a	None	None	None.
3/4.12.3.....	4.12.3 and B4.12.3	3/4 12-3 thru 3/4 12-4	A.2).a	None	None	None.
5.1.....	5.1	3/4 5-1 thru 3/4 5-3	A.2).a	A.2).b.	A.2).c.	None.end page 4
5.2.1.....	None, Adds New Design Feature.	5-4	A.2).a	None	None	None.
5.2.2.....	5.3.A.2	5-5 thru 5-6	A.2).a	A.2).b.	None	None.
5.3.1.....	5.2.1	5-7 thru 5-8	A.2).a	None	None	None.
5.3.2.....	5.2.5	5-9 thru 5-10	A.2).a	None	None	None.
5.4.1.....	None, Adds New Design Feature.	5-11 thru 5-12	A.2).a	None	None	None.
5.4.2.....	5.2.3	5-13 thru 5-14	A.2).a	None	None	None.
5.5.....	None, Adds New Design Feature.	5-15 thru 5-16	A.2).a	None	None	None.
5.6.1.....	5.4.2 and 5.4.3	5-17 thru 5-18	A.2).a	A.2).b.1,2	None	None.
5.6.2.....	None, Adds New Design Feature.	5-19 thru 5-20	A.2).a	None	None	None.
5.6.3.....	None, Adds New Design Feature.	5-21 thru 5-22	A.2).a	None	None	None.
5.7.....	None, Adds New Design Feature.	5-23 thru 5-24	A.2).a	None	None	None.
6.1.....	6.1.1	6-1 thru 6-2	A.2).a	A.2).b.	None	None.
6.2.1.....	6.2.1	6-3 thru 6-4	A.2).a	None	None	None.
6.2.2.....	6.2.2	6-5 thru 6-6	A.2).a	A.2).b	None	None.
6.2.3.....	6.3.1	6-7 thru 6-8	A.2).a	None	None	None.
6.3.....	6.3	6-9 thru 6-10	A.2).a	A.2).b.	None	None.
6.4.....	6.4	6-11 thru 6-12	A.2).a	A.2).b.	None	None.
6.5.1.....	6.5.1	6-13 thru 6-15	A.2).a	A.2).b.1,2,3	A.2).c.1	None.
6.5.2.....	6.5.2	6-16 thru 6-17	A.2).a	None	A.2).b.	None.
6.5.3.....	None, Adds New Specification.	6-18 thru 6-19	None	A.2).a	A.2).a	None.
6.6.....	6.6	6-20 thru 6-21	A.2).a	None	None	None.
6.7.....	6.7	6-22 thru 6-25	A.2).a	A.2).b.2	A.2).b.1 and A.2).c.1,2	None.
6.8.....	6.8, 6.13, 6.14, 6.15, and 6.16.	6-26 thru 6-28	A.2).a	A.2).b.1,2	A.2).c	None.
6.9.1.....	6.9, 6.9.1, 6.9.3, and 6.9.4.	6-29 thru 6-32	A.2).a	A.2).b.1,2	None	None.
6.9.2.....	6.9.3.a, 6.9.3.b, and 6.9.3.c.	6-33 thru 6-34	A.2).a	None	None	None.
6.10.....	6.10	6-35 thru 6-36	A.2).a	A.2).b.1,2	None	None.
6.11.....	6.11	6-37 thru 6-38	A.2).a	None	None	None.
6.12.....	6.12	6-39 thru 6-41	A.2).a	A.2).b.1,2	A.2).b.3	None.
6.13.....	6.17	6-42 thru 6-43	A.2).a	A.2).b.	None	None.
6.14.....	6.18	6-44 thru 6-45	A.2).a	None	None	None.
6.15.....	None, Adds New Specification.	6-46 thru 6-47	None	A.2).a	None	None.
None.....	3.4.1.a.2	G-1 thru G-4	None	None	one item	3.4.1.a.2.
None.....	Table 4.1-1	G-1 thru G-4	None	None	seven items	Table 4.1-1 items, 12, 13, 14, 16, 19, 24, 25.
None.....	Table 4.1-2	G-1 thru G-4	None	None	four items	Table 4.1-2 items 4, 9, 15, and 16.
None.....	4.18	G-1 thru G-4	None	None	one item	4.18 "power availability."

TABLE I.—CATEGORIZATION OF CHANGES TO THE CURRENT TECH. SPECS.—Continued

Revised tech. spec. No.	Current tech spec. No(s).	Category information from NSH for revised technical specifications				
		NSH appendix A page references	Administrative changes	More complete or restrictive changes	Changes that are relaxations	Deletions from the current tech. specs.
None	Section 5 Design Features.	G-1 thru G-4	None	None	eleven items	5.2 2a & 2b, 5.3.A.1, 5.3.A.2, 5.3.B1 & B2, 5.3.C.1, 5.3.C.2, 5.3.C.3, 5.4.1, and 5.2.4.

The Commission provides bases for a proposed no significant hazards consideration determination in 10 CFR 50.92. These include the three standards set forth in 10 CFR 50.92 for determining whether a significant hazards consideration exists. Under the Commission's regulations in 10 CFR 50.92, a proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Evaluation

The licensee performed a detailed evaluation of the changes proposed in the RTS against the above standards and concluded that none of the proposed changes involves a significant hazards consideration. Reference: Attachment II, Appendix A, of the Application.

The staff reviewed the No Significant Hazards Evaluation (NSHE) provided in Attachment II, Appendix A to the June 5, 1989 license amendment proposal. Based on that review, the staff agrees with the licensee's conclusions that the proposed amendments involve no significant hazards considerations. The staff has selected examples of the proposed TS changes in each of the four categories of characterization (administrative, more restrictive, etc.) employed by the licensee and which also cover the six parts of the RTS, and they are discussed below. These examples are considered to be typical of the proposed changes. The staff's evaluation of no significant hazards is presented below.

Category 1—Administrative Changes

Examples of administrative changes include consolidation of requirements in one place, reformatting of requirements, numbering of all pages, and revision of definitions (part 1 of the TS). Three examples are discussed below.

Example 1: Consolidation

In the CTS, requirements for a given plant system or component are often dispersed throughout a number of Sections of the CTS. The RTS consolidates the requirements for a given system or component into one Section, which improves TS organization. The changes in the Refueling Water Storage Tank requirements are an example of this type of change. The CTS limits on borated water volume and boron concentration are located on page 3.4-1 of the CTS in section 3.4.1.a.1, and the requirement for a weekly verification of boron concentration is found in Table 4.1-2, item 2 (there is no page number; the table is located six pages past page 4.1-1). In the RTS, this information is consolidated in one place in a Refueling Water Storage Tank TS, on page 3/4 5-9, located in Section 3.5.4, Limiting Conditions for Operation, and on the same page, Section 4.5.4, Surveillance Requirements.

Because there is no technical change related to consolidation, i.e., the consolidated requirements remain the same, consolidation does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The three standards of 10 CFR 50.92 are satisfied and the staff concludes there is no significant hazards consideration.

The staff also concludes that, throughout the RTS where consolidation has been made, there are no significant hazards considerations involved.

Example 2: Reformatting

In the CTS, beginning on page 3.1-1, the format of the TS consists of a very

generalized statement of applicability, a statement of purpose of the TS, and a detailed specification which combines requirements with actions to be taken if requirements are not met. The RTS have an improved format which sets forth the requirement stated as the Limiting Condition of Operation (LCO), the operational mode applicability, and the statement of action required if the LCO is not met. These requirements (LCO, applicability, and action) are organized as separate entities and presented in the same sequence with a heading in capital letters throughout sections 3 and 4 of the RTS.

Reformatting has not resulted in any changes to the plant operating requirements that are in the RTS. Since reformatting does not change any of the requirements contained in the TS, reformatting does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The three standards of 10 CFR 50.92 are satisfied, and the staff concludes there is no significant hazards consideration. The staff also concludes that reformatting throughout the RTS involves no significant hazards considerations.

Example 3: Revision of Definitions

In its no significant hazards evaluation (Appendix A of Attachment II of the Application, pages 1-1 through 1-3) the licensee evaluated changes in Part I (definitions) of the CTS and concluded that no significant hazards consideration is involved. On page 1-1 of Appendix A, in items 2.a, 2.b and 2.c respectively, the licensee notes that 11 new definitions have been added, refueling interval has been explicitly defined and 13 definitions have been deleted. Generally, the added definitions are related to specific parameters which the TS help to control, such as various leakages, tests, and neutron flux. Examples of added definitions include pressure boundary leakage, actuation

logic test, and axial flux difference. The deleted definitions, on the other hand, are general terms which are either not needed for specific controls, or are not needed because they already exist somewhere else (for example, in the Code of Federal Regulations). Examples of deleted definitions include design power, safety limits, and reactor protection system.

The licensee has addressed the three criteria of 10 CFR 50.92(c) and determined that they are satisfied because:

(1) The proposed change as described in Item 2.a is similar to example (i) of 48 FR 14870 in that it is an administrative change which consolidates current requirements into a technical specification format consistent with the Standard Technical Specifications and does not involve [technical] or plant modifications.

(2) The change in Item 2.b is similar to example (ii) of 48 FR 14870 in that it provides additional restrictions and controls by requiring surveillances with frequency "R" to be performed at least once per 18 months.

(3) The proposed changes described in Item 2.c represent definitions of terms which are not used or which are defined in other places in the revised technical specifications. In some cases, the proposed changes described in Item 2.c represent restrictions to plant operation. In each case where an omitted definition contains a restriction, the restriction is included in another section of the revised technical specifications.

Therefore, the proposed changes described in Item 2.c also are similar to example (i) of 48 FR 14870 in that they are administrative changes which consolidate current requirements into a technical specification format consistent with the Standard Technical Specifications and do not involve technical or plant modifications.

The staff agrees with the licensee's conclusion that there are no significant hazards considerations, with the following additional comments. The changes in definitions described on pages 1-1 through 1-3 of Appendix A to Attachment II of the Application do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involved a significant reduction in a margin of safety because: (a) the added definitions help to clarify and avoid misinterpretation of existing terms related to specific controls and tests, and (b) those definitions deleted are either very general and therefore not very useful, or they exist elsewhere, or their useful content is included in the specific relevant technical specification. For example, one deleted definition is Limiting Conditions for Operation (LCO). While the LCO definition might

be of interest to persons outside the reactor operations field, the definition in the CTS ("those restrictions on reactor operation, resulting from equipment performance capability, that must be enforced to ensure safe operation of the facility") is obvious and unnecessary for reactor operators and personnel and NRC staff by whom the TS are used. Furthermore, LCO is described in 10 CFR 50.36. An example where a deleted definition has its useful content transferred to a specific TS is "Safety Limits". In the CTS on page 1-1, the definition states that if any safety limit is exceeded, the reactor shall be shut down until the AEC (now the NRC) authorizes resumption of operation. This statement refers to action required rather than stating a definition. The action to shut down has been transferred to the individual RTS Section for safety limits in Part 2. The action to remain shutdown until NRC approval is obtained to restart is transferred to page 6-13 of the RTS in Section 6.7.1.d. The remainder of the "Safety Limits" definition in the CTS is general in nature and is also described in 10 CFR 50.36.

The revision of the definition of refueling interval specifies a time interval of 18 months or less, which clarifies what is meant by refueling interval. No specific time interval is defined in the CTS so that a refueling interval could be any convenient period of time resulting from an actual fuel cycle. The revised definition brings the Turkey Point definition in line with STS practice in the industry. No significant increase in probability or consequences of an accident, creation of a new or different kind of accident, or reduction in a margin of safety can result from these changes because the revised definition is narrower, and is thus encompassed within the CTS definition.

Category 2—RTS requirements which are more restrictive or more complete than CTS requirements

Examples of proposed changes in requirements which are more restrictive or more complete than those now in the CTS are discussed below. These include: examples of changes to safety limits and limiting safety settings in Part 2 of the TS, example of changes to LCOs in Part 3 of the TS, examples of changes to surveillance requirements in Part 4 of the TS, and examples of changes to administrative controls in Part 6 of the TS.

Example 1: Safety limits and limiting safety settings

In CTS Sections 1.1 (page 1-1) and 2.1 (page 2.1-1) covering reactor core safety

limits, the combination of reactor pressure, temperature, and thermal power level are not permitted to exceed certain limits provided in Figure 2.1-1 (no page number). However, no explicit required action is identified in the CTS if the limits are exceeded. Instead, the operators are referred to CTS Section 3.0.1 which requires that action be initiated within 1 hour to reduce reactor power and place the reactor in a different appropriate operating mode, the earliest being Hot Standby (operational mode 3) within 6 hours. However, in the RTS Section 2.1 (page 2-1), the same limits apply, but a specific explicit action statement has been added. This follows the format of the STS. The action statement is more restrictive because (1) it requires the operators to place the reactor in Hot Standby within 1 hour instead of 6 hours, and (2) it refers the operator to Section 6.7.1 (page 6-12) of the RTS, which provides reporting requirements.

Also, CTS Section 2.1 requires that specified power/pressure/temperature limits for one- and two-loop operation and natural circulation not be exceeded. However, because these limits have not been analyzed in the safety analysis, they are being deleted.

In the licensee's no significant hazards evaluation, Appendix A of Attachment II of the Application, pages 2-1 and 2-2, the licensee evaluated the changes to Section 2.1 of the CTS in accordance with the three standards of 10 CFR 50.92(c) and concluded that the changes do not involve a significant hazards consideration. The NRC staff agrees with the licensee's determination and adds the comments below regarding the three standards of 10 CFR 50.92(c).

Operation of Turkey Point Units 3 and 4 in accordance with the proposed changes described above would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. No increase in accident probability will result from reducing reactor power sooner when core limits are exceeded, because reducing power sooner will bring the reactor back to within the required limits at an earlier time. Also, restricting the reactor to three-loop operation removes the possibilities for thermal stresses and temperature gradients associated with asymmetric coolant flow which could accompany operation with only one or two coolant loops. In addition, since there is no change in the design basis accidents, no increase in consequences is possible.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. Because

the changes merely deal with reducing the reactor power sooner to bring the reactor back within required limits, there is no new or different kind of accident created. The removal of alternative conditions of operation, such as two-loop operation, does not create a new or different kind of accident because no new operating conditions are incorporated.

(3) Involve a significant reduction in a margin of safety. The proposed changes increase the margin of safety by requiring the reactor to reach Hot Standby sooner, by limiting the operation to three loops, and by providing clear guidance for timely notification of authorities.

The staff concludes that the above changes do not involve a significant hazards consideration. The staff further concludes that, throughout the RTS, similar proposed changes involving safety limits and safety settings found primarily in Part 2, which are as restrictive as, or more restrictive than, the CTS, meet the standards of 10 CFR 50.92(c) and do not involve significant hazards considerations.

Example 2: LCOs

The CTS provided no requirements for containment air temperature. The changes proposed in Section 3/4.6.1.5 of the RTS (page 3/4 6-7) include new limits on containment air temperature, an action statement that requires reactor power reduction if the limits are exceeded for a stated time interval, and stated operational mode applicability (modes 1 through 4) that applies the LCO and action statement to those operating modes in which a serious accident is most likely to occur (at power or while the reactor is hot).

In Appendix A of Attachment II of the Application, pages 3/4 6-9 and 6-10, the licensee evaluated these additional and more limiting requirements against the three standards of 10 CFR 50.92(c)—and concluded that the proposed changes do not involve significant hazards considerations. The staff agrees with the licensee's conclusion and adds the following comments. Because additional and more limiting requirements are imposed on plant operation, the probability of an accident and its consequences are reduced. It is less likely that the containment and the equipment in it will fail or cause an accident due to high temperatures. Thus, there would be no increase in probability or consequences of an accident. There will be no new or different kind of accident created, nor any reduction in a margin of safety because the added requirements (addition of an LCO, action statement,

and mode applicability) are all as restrictive, or more restrictive, than the CTS.

Therefore, the staff concludes that the three standards of 10 CFR 50.92(c) are met, and that there are no significant hazards considerations. The staff further concludes that, throughout the RTS, proposed changes consisting of additional or more restrictive LCOs, action statements, and mode applicability involve no significant hazards considerations.

Example 3: Surveillances and tests

In the containment air temperature example discussed above, no surveillance or test requirements were provided in the CTS. The proposed changes in the RTS in Part 4 (page 3/4 6-7) add a surveillance requirement to determine containment temperature at various locations at least once every 24 hours. In Appendix A of Attachment II of the Application, pages 3/4 6-9 and 6-10, the licensee evaluated these changes against the three standards of 10 CFR 50.92(c), and reached the conclusion that no significant hazards considerations are involved. The staff agrees with the licensee's conclusion and offers the following comments. Adding new surveillance requirements or increasing the frequency of existing surveillances for equipment that is important to safe plant operation can provide additional knowledge of the plant status so that operators can take timely corrective action if needed. Therefore, this helps to reduce the probability or consequences of an accident. Such action also helps to prevent new or different kinds of accidents from occurring, and helps to maintain desired margins of safety.

The staff concludes that the three standards of 10 CFR 50.92(c) are met, and there are no significant hazards considerations involved. The staff also concludes that, throughout the RTS, where surveillance or tests have been added or made more extensive or frequent, there are no significant hazards consideration involved.

Example 4: Administrative controls

Changes proposed in Part 6 of the RTS include changes in requirements for reporting, qualifications for operators, procedures, training scope, programs (e.g., chemistry), records retention, high radiation areas, review and oversight by review committees, and NRC approval of the Process Control Program. All of these changes are evaluated by the licensee in pages 6-1 through 6-47 of Appendix A of Attachment II of the Application. The licensee has evaluated these types of changes against the three standards of 10 CFR 50.92(c) and concluded they do not involve

significant hazards considerations. The staff has reviewed all of these changes individually and agrees with the licensee's conclusion.

Reporting requirements are considered to be typical of administrative controls in that they do not have a strong immediate influence on the probability of an accident or its consequences (compared, for example, to the level of reactor pressure or temperature or the availability of cooling systems), or on the kind of accident or the margins of safety. A detailed example and analysis of the proposed changes follows:

In Sections 6.9, 6.9.1, 6.9.3, and 6.9.4, beginning on page 6-15 of the CTS, requirements are described for reporting various information items to the NRC. The RTS adds a new requirement for reporting challenges to the PORVs or safety valves. In addition, the RTS clarifies the reporting of changes in the analytical procedure for determining peaking factor limits.

These RTS changes do not significantly increase the probability or consequences of an accident previously evaluated because reporting requirements are only indirectly linked to accident probability. Adding reporting requirements in the RTS does not significantly increase accident or consequence probability, does not create a new or different kind of accident, and does not reduce safety margins. Reporting requirements alert the NRC to the status of plant operational activities of the licensee and provide generic information for use in long-term investigation programs. Likewise, the clarification of requirements simply removes some of the latitude for interpretation previously available to the licensee.

The three standards of 10 CFR 50.92(c) are met for these changes, and the staff concludes that there are no significant hazards considerations.

Category 3—Relaxation of CTS Requirements

Throughout Appendix A of Attachment II of the Application, the licensee has identified a number of changes characterized as "relaxations" from the CTS. The NRC staff review has determined there are no cases where a significant relaxation has been made and not identified as such. In a few cases the staff does not agree there is a relaxation, but because the licensee's characterization is conservative, it is an acceptable characterization. Nearly all of the licensee's proposed relaxations are in Parts 3 and 4 (LCOs and surveillance requirements) of the RTS.

Only one relaxation was proposed in Part 2 (safety limits), on page 2-5 of Appendix A of Attachment II of the Application; the staff does not agree it is a relaxation. Furthermore, the staff found no relaxations in Part 1 (definitions) or Part 5 (design features). There were 4 relaxations proposed in Part 6 (administrative controls); these are described in Appendix A of Attachment II of the Application on Page 6-13, item A.2.c, page 6-23, items A.2.c.1 & A.2.c.2, and page 6-26, item A.2.c. These relaxations of administrative controls are not significant because they are minor changes which have only a weak link to operational safety. For example, the changes proposed on page 6-23, items A.2.c.1 & A.2.c.2 of Appendix A of Attachment II of the Application relax the time limit permitted for some reporting requirements.

Therefore, the only relaxations of any significance are in Parts 3 and 4. Examples of proposed relaxations which are typical of those in Part 3 (LCOs) and Part 4 (surveillance requirements) and the evaluation of no significant hazards considerations are discussed below.

Example 1: Relaxation of LCOs and surveillance frequencies

In CTS sections 3.2.4. & b and 3.2.5, pages 3.2-2 and 3.2-3, requirements on movable control rods are stated. These include: a limit of 0.3% potential reactivity insertion by ejection of an inoperable rod, and a reduction of the high flux trip setpoint limit when alarms for both rod deviation and power range channel deviation are inoperable. If either of these two alarms are inoperable, the CTS action requires that control rod positions be logged once per shift. The licensee has evaluated a proposed relaxation of the above requirements in Appendix A of Attachment II of the Application, pages 3/4 1-33, items A.2.c.1,2,3, and 4, and on pages 3/4 1-34, 35, and 36. The first (0.3%) LCO is relaxed in the RTS by deleting the requirement. The setpoint reduction LCO is relaxed by replacing the requirement for a setpoint limit reduction with two requirements which increase the surveillance of the two parameters. The rod position surveillance frequency is increased from once per 12 hours to once per 4 hours when the rod deviation alarm is inoperable, and the quadrant power tilt surveillance frequency is increased from once per 7 days to once per 12 hours when the power range deviation alarm is inoperable. The CTS action is relaxed in the RTS by replacing the logging of rod positions once per shift with the more useful action of calculating the

quadrant power tilt ratio once per 12 hours. The licensee also proposes to relax the surveillance frequency for rod operability from 14 days in the CTS to 31 days in the RTS.

The licensee determined that the three standards of 10 CFR 50.92(c) have been met and there are no significant hazards considerations. The licensee's evaluation relevant to the requirements of item (A)2.c discussed here is reproduced below:

The proposed change to relax the requirements in Item 2.c above, does not involve a significant hazards consideration because these changes do not:

a: Involve a significant increase in the probability of or consequences of an accident previously evaluated.

The reactivity limit in the current TS is not needed to preserve any rod ejection analysis design assumption. Other restrictions in the proposed TS for MOVABLE CONTROL ASSEMBLIES ensure that the normal rod insertion and alignment limits are preserved thereby preserving the original safety analysis limiting assumptions related to rod position.

The current Technical Specification requirement to reduce the hi-flux trip setpoint when both the rod deviation and the power range channel deviation alarm are inoperable is replaced with more frequent surveillances. The rod position surveillance is increased from once per 12 hours to once per 4 hours when the rod deviation alarm is inoperable. In the quadrant power title Technical Specification the power tilt surveillance is increased from once per 7 days to once per 12 hours when the power range deviation alarm is inoperable. The increased surveillances will adequately compensate for an INOPERABLE rod position deviation or power range channel deviation alarm and are consistent with industry practice in that these are the same SURVEILLANCE REQUIREMENTS as in the Standard Technical Specifications.

Relaxing the rod OPERABILITY test surveillance from 14 to 3[1] days has no impact on control rod availability because of the insignificant number of control rod drive failures determined by the current bi-weekly surveillance test. The proposed surveillance reduction will also have the benefit of decreasing the likelihood of inadvertently dropping a rod during the test and reducing wear on the rod drive mechanism from the surveillance test. The proposed 3[1] day test interval is also consistent with industry practice in that 3[1] days is the Standard Technical Specifications surveillance interval.

In summary, the proposed relaxations of current Technical Specification requirements do not significantly increase the probability of or consequences of a previously evaluated accident because: The 0.3% reactivity limit is not necessary to preserve any Safety Analysis margin, setpoint reduction is now as appropriate a requirement to compensate for an INOPERABLE rod position deviation and flux deviation alarm as the increased

surveillance, the 3[1] day surveillance to verify rod OPERABILITY, combined with other rod position surveillance requirements will adequately verify rod OPERABILITY.

b. Create the possibility of a new or different kind of accident from any previously analyzed because the proposed change introduces no new mode of plant operation nor involves a physical modification to plant.

c. Involve a significant reduction in a margin of safety. As discussed in item 3a above, the 0.3% reactivity limit is not a restriction based on any safety analysis assumption, the hi-flux setpoint reduction is not necessary to compensate for any adverse impact of an INOPERABLE rod position and flux deviation alarm in the safety analysis, and the 31 day OPERABLE rod surveillance is consistent with industry practice and the Standard Technical Specifications.

Based on the above considerations, the changes included in the development of proposed Technical Specifications 3/4.1.3.1 are considered not to involve a significant hazards consideration as defined in 10 CFR 50.92.

The staff agrees with the licensee's evaluation and conclusion and adds the following comments. In part a. there is a typographical error in that the rod operability surveillance test frequency is referred to four times as 30 days instead of the correct value of 31 days. This example involves deleting an LCO that is not needed to preserve any safety analysis assumption. Where this type of change occurs in the RTS, the staff concludes that there are no significant hazards considerations. The replacement of an LCO with more restrictive surveillances to accomplish the objective of monitoring plant status while reducing the risk of accident from an unnecessary plant transient is also involved. Where this type of change occurs in the RTS, the staff determined that there are no significant hazards considerations. This change also involves replacing an action which is not very useful (logging control rod position) with one which addresses the safety concern (power distribution) and which is explicit with its own subsection, "ACTION:". Throughout the RTS where this type of change in action statement is made, the staff concludes there are no significant hazards considerations because the improved knowledge of plant status that results from the change does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff also notes that this is an example where the surveillance

frequency is not critical to safety because of the low rate of equipment failures, and where the test itself adds to the risk of failure. Therefore, the staff concludes that, throughout the RTS, there are no significant hazards considerations associated with relaxing surveillance frequencies of this type.

Example 2: Relaxed action statement within LCO

Section 3.7.2 (pages 3.7-1 and 2) of the CTS requires that four d.c. batteries be maintained in an operable condition. The action required, if one battery is inoperable for more than 24 hours, is to place both reactor units in Hot Standby (mode 3) within 6 hours. The proposed change in Section 3.8.2.1 of the RTS identifies the specific four batteries, and extends the time available to be in Hot Standby to 12 hours. In Appendix A of Attachment II of the Application, pages 3/4 8-11 through 3/4 8-14, the licensee evaluated proposed changes against the three standards of 10 CFR 50.92(c) and concluded there are no significant hazards considerations. The relevant part of the licensee's evaluation is reproduced below.

The proposed change to relax the action requirements to allow for a sequential unit shutdown if a battery is inoperable does not involve a significant hazards consideration because this change would not:

(a) Involve a significant increase in the probability of or consequences of an accident previously evaluated. The proposed action statement requires within 24 hours of loss of a battery that one of the affected units be placed in HOT STANDBY within 6 hours followed by immediate shutdown of the other units to HOT STANDBY with the next 6 hours. Both units are required to be placed in COLD SHUTDOWN within 30 hours following achievement of HOT STANDBY. The proposed ACTION statement provides for a more organized method for a dual unit shutdown.

Because the proposed change would allow more preparation time to shutdown the second unit or restore the inoperable DC bus to operable status, and as the likelihood of an accident being initiated during this additional short time is remote, this change would not involve a significant increase in the probability of our consequences of an accident previously evaluated.

(b) Create the possibility of a new or different kind of accident from any previously analyzed because the proposed change introduces no new mode of plant operation nor involve[s] a physical modification to the plant.

(c) Involve a significant reduction in a margin of safety because the revision allows time to recover the DC bus while shutting down one unit and preparing for an organized shutdown of the other unit. FPL believes the advantages of these operational considerations would increase the margin of safety in the unlikely event that dual unit shutdown is required.

The staff agrees with the licensee's evaluation and conclusions and adds the following comments for clarification. This change is proposed because it is safer to shut down the two Turkey Point units sequentially, rather than simultaneously, from the control room that is common to both units. Because it takes about 6 hours for one Turkey Point unit to reach Hot Standby from full power in an orderly process, 12 hours is needed for two units to reach Hot Standby. The added orderliness of control room activities and reduced transient demand on plant equipment obtained by shutting down only one unit at a time is safer than shutting down both Turkey Point units simultaneously. While this change represents a relaxed requirement on the licensee, the staff believes it is safer for Turkey Point. Also, specific identification of the batteries is a desired clarification.

Example 3: Relaxation of surveillance

In the CTS, Table 4.1-1, item 18B (no page number, but follows page 4.1-1) area radiation monitors are required to be checked daily, tested monthly, and calibrated annually. The proposed change in the RTS would delete this as a TS requirement.

In Appendix A of Attachment II of the Application, page 3/4 3-10, item A.2.c.1, and on pages 3/4 3-11 through 3/4 3-13, the licensee evaluated this change against the three standards of 10 CFR 50.92(c) and determined there is no significant hazards consideration associated with the change. The staff agrees with the licensee's evaluation and conclusion. The staff notes that: (1) These monitors are not used for automatic protection during accidents, (2) other radiation monitors provide indication of an accident by monitoring high radiation in the containment building, reactor coolant, or other process systems, (3) these monitors will be maintained and monitored using plant procedures, and they are backed up by area radiation surveys, and (4) this change is consistent with the STS.

The staff concludes that elimination of surveillances of this type, i.e., those not required to protect the public health and safety, involve no significant hazards considerations because they do not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Category 4—Relocation of requirements to other controlled documents

The only example of relocation of requirements from the CTS to another controlled document is described on page G-1 of Appendix A of Attachment II of the Application. Design requirements involving seven technical areas are proposed to be deleted from the CTS. The licensee has evaluated these deletions against the three criteria of 10 CFR 50.92(c) page G-4 of Appendix A. The staff agrees with the licensee's evaluation. The staff notes that the design requirements to be deleted from the CTS are contained in another controlled document, the Final Safety Analysis Report (FSAR). For example, the first design feature listed on page G-1 of Appendix A of Attachment II of the Application, "Reactor Coolant System design and maximum potential seismic accelerations (section 5.2.2 a & b)," is located on page 5.2-1 of the CTS and also on pages 5A-2 and 2.11-2 of the FSAR; the reference is deleted in the RTS. The other six design features are described completely in the FSAR.

These design requirements are not used by reactor operators. For example, the design feature cited above (section 5.2.2 a & b of the CTS) states the horizontal and vertical seismic acceleration limits for which the plant structures and equipment are designed. There are no relevant operating procedures or operating requirements dealing with these seismic accelerations. The accelerations were used to determine necessary structural strength when the plant and equipment were designed and built. Because these design requirements are not used by the operators in their day-to-day operation of the plant, the relocation of this material is not a relaxation of requirements. A similar comment applies to all seven design requirements being relocated to the FSAR. The FSAR is a better place to locate such information. Because there is no change to the plant or its design operating requirements, the relocation of the seven design requirements does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The three criteria of 10 CFR 50.92 are met, and there are no significant hazards considerations.

Conclusion

Based on the above considerations, the Commission has made a proposed

determination that the amendment request involves no significant hazards considerations.

Public Comments

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making the final determination.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC.

For further details with respect to this action, see the application for amendments dated June 5, 1989, as supplemented November 3, 1989 and May 1, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Dated at Rockville, Maryland, this 9th day of May 1990.

For the Nuclear Regulatory Commission.
Gordon E. Edison, Sr.

Project Manager, Project Directorate II-2, Division of Reactor Projects—1/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90-11261 Filed 5-14-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Power Authority of the State of New York (the licensee) for an amendment of Facility Operating License No. DPR-59, issued to the licensee for operation of the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York. A notice

of Consideration of Issuance of this amendment was not published in the *Federal Register*.

The purpose of the licensee's amendment request was to eliminate the augmented ISI program being applied to the main steam and feedwater piping from Technical Specifications (TS) Section 4.6.F.2.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated.

By June 14, 1990, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulator Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 8th day of May 1990.

For the Nuclear Regulatory Commission
Robert A. Capra,
Director Project Directorate I-1, Division of Reactor Projects—1/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-11265 Filed 5-14-90; 8:45 am]

BILLING CODE 7590-01-M

Power Authority of the State of New York; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. Fitzpatrick Nuclear Power Plant located in Oswego County, New York.

The amendment would incorporate three proposed changes to the Technical Specifications. The first proposed change would permit continued plant operation with two of the eleven Safety/Relief Valves (SRVs) out of service (currently only one SRV out of service is permissible for thirty days). This change would also reduce the number of automatic depressurization system (ADS) valves required to be operable to five of the seven valves (currently only one ADS valve out of service is permissible for thirty days). The second proposed change would replace the staggered setpoints of the SRVs with a single nominal setpoint. The third proposed change would increase the maximum setpoint tolerance for the SRVs from one percent to three percent. The associated Bases sections would also be revised to reflect these changes.

Other miscellaneous proposed changes would clarify terminology, correct typographical errors, delete a requirement to perform ADS logic functional tests which were inadvertently omitted from a previous amendment application, and delete Specification 4.6.E.4 which is redundant to a specification in section 6.9 of the Technical Specifications.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 14, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing

Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect (s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 1633 Broadway, New York, New York, 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 20, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, at

the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 8th day of May 1990.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-11264 Filed 5-14-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28004; File No. SR-GSCC-90-03]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the Government Securities Clearing Corporation Relating To Changes to Its Fee Structure

May 9, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 23, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC's fee schedule as follows:

Additional language is *italicized*;

Deleted language is in [brackets].

Government Securities Clearing Corporation

Fee Structure

I. Trade Comparison Fees

A. For entry on one side of a U.S. Treasury Bond, Note, Bill, STRIP or U.S. Government Agency (excluding Mortgage-Backed Securities) trade for comparison processing and production of reports, *except as otherwise indicated below*, the charges are as follows:

¹ 15 U.S.C. 78a(b)(1) (1989).

for Computer to Computer input and,	
—Computer to Computer output.	0.50 per side [*];
—Magnetic Tape output.	1.00 per side [*];
—Paper output.....	1.50 per side [*];
for Magnetic Tape input and,	
—Computer to Computer output.	1.00 per side [*];
—Magnetic Tape output.	1.00 per side [*];
—Paper output.....	1.50 per side [*];

B. Comparison charges for data on trades executed on yield basis that are submitted to the Corporation prior to auction shall be as set forth above less 20 percent.

[* All trades for a given Participant will be billed at the highest rate applicable to that Participant during each billing period.]

[B] C. Each Member of the Comparison System shall, regardless of the level of its activity, pay a minimum monthly fee of \$500. Notwithstanding the above, for a Comparison-Only Member that has an affiliate that is a Netting Member, such minimum fee shall be \$250.

[C] D. If, for any given Business Day, a member of the Comparison System has more trades with regard to which it receives from the Corporation advisory notices than for which it submits to the Corporation data that does not compare with matching trade data before being deleted from the Comparison System, such Member, in addition to being charged for the trade data that it submits that compares with matching trade data, shall be charged for the number of trades for which it received an advisory notice in lieu of being charged for the number of trades for which it submitted data that did not compare with matching trade data. Such charge will be imposed for only the first day on which an advisory notice with regard to a trade is sent by the Corporation to a Member.

II. Netting Fee and Charges

A. Netting Fee

For each side of a compared trade that is netted, a fee (in addition to the comparison fee) of \$1.00.

B. [Clearance and] Financing Charges(*)

1. No charges for Inter-Dealer Broker Netting Member.

2. For each other Netting Member, a pass-through charge calculated on a percentage of the total of all such costs incurred by GSCC, allocated by product, which percentage is calculated as

follows: That dollar value of settled deliver and receive obligations made by such Netting Member in such product divided by total dollar value of settled deliver and receive obligations of all such non-Inter-Dealer Broker Netting Members in such product

3. Notwithstanding the above, if, after providing to a Netting Member appropriate notice and opportunity to be heard, the Board determines that such Netting Member has, on a recurring basis and without good cause, caused GSCC to incur financing costs, such Member will be obligated to pay for the entire amount of any financing costs incurred by GSCC as the result of deliveries by such member to GSCC.

(*) Financing costs include the costs of both carrying positions overnight and borrowing to cover Inter-Dealer Broker Netting Member Mark and TAP payments.

C. Clearance Charges

1. No charges for Inter-Dealer Broker Netting Members.

2. For each other Netting Member, a pass-through charge calculated on a percentage of the total of all such costs incurred by GSCC, allocated by product, which percentage is calculated as follows:

Total number of settled deliver and receive obligations made by such Netting Member in such product divided by total number of settled deliver and receive obligations of all such non-Inter-Dealer Broker Netting Members in such product

D. Move of collateral in custody—direct pass-through of costs to each Netting Member.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed change is to amend GSCC's fee structure in various respects. The proposed changes are designed to more equitably allocate to members the costs incurred

by GSCC in providing its services and to promote the timely and accurate submission of data for comparison and meeting.

1. Charging for receipt of advisory notices under certain circumstances

Under the current fee structure, comparison fees are charged based on the entry or submission of a side of a trade. Charges are assessed based solely on a member's input of data; the fee structure does not take into account whether data submitted to GSCC is accurate or compares with data received by GSCC from a counterpart, nor does it look to whether a counterpart has received from GSCC an advisory notice with regard to a trade but has not itself taken any action to promote comparison. Thus, the fee structure provides no charge for a member that fails to submit data for comparison in a timely manner, despite the fact that such member may be benefiting from the comparison operation by receiving usable output on its trades. This hinders the level of comparisons performed by GSCC and is unfair to members that submit trade data in a diligent fashion.²

To address these problems, the method for charging members for their comparison activity would be changed to take into account their receipt of output as well as their submission of input. Specifically, for any member that, on any given business day, has more trades for which it receives advisory notices than for which it submits trade data that does not compare (which, unless an error has occurred—for which a member would not be penalized—would indicate that the member was not timely submitting data for a significant portion of its trades with other members), such member, in addition to being charged in ordinary course for all compared trades, would also be charged based on the number of trades for which it received an advisory notice, instead of merely being charged for the number of trades for which it submitted data. The charge would only be imposed for the first day on which the data was pending.³

² GSCC has clarified that, "the purpose of changing GSCC's fee schedule to, among other things, charge members for receipt of advisory notices under certain circumstances is . . . to recoup all of the economic cost associated with providing members with Comparison System output, including output in the form of advisory notices." Letter from Jeffrey F. Ingber, Associate General Counsel, GSCC, to Julius Leiman-Carbia, Staff Attorney, Division of Market Regulation, Commission (May 2, 1990).

³ E.g.: A participant submits 80 trades, via computer to computer, out of which 75 compare with matching trade data. Five trades, however, do

Continued

Under the revised fee schedule, a member would continue to be charged based essentially on the number of trades that it submits data for. A member that submits data on all of its trades with other members in a timely manner will not be affected by this proposed change.

2. Lowering the cost of comparison of data on trades executed on a yield basis

Some members have indicated that certain counterpart members often do not submit, either in a timely manner or at all, trade data for comparison pre-auction of when-issued trades, with the result that such counterpart receive the benefit of advisory output on such trades without incurring a charge for comparison activity. In conjunction with the above proposed change, which would help correct a situation in which certain members may be unfairly benefiting by receiving usable comparison output without incurring a comparison of when-issued trades at the pre-auction stage, the fee structure would be revised to charge a lower rate (20% less) for the pre-auction comparison done on a yield basis.

3. Lowering the minimum fee for a second account

Currently, each member of GSCC is required to pay a minimum monthly fee of \$500, regardless of whether the member has one or more affiliates that also are GSCC members. In order to avoid imposing a monetary disincentive on a company that has Netting Member affiliate to also have as a participant in the Comparison System only another of its subsidiaries that may have a low level of trading activity in Government securities, the minimum monthly fee per member would be reduced to \$250 for the latter entity.

4. Altering the method of allocation of clearance charges

Currently, clearance charges incurred by GSCC are passed through to Netting Members as determined by an allocation formula that is based on the total dollar value of settled deliver and receive obligations of each member on a product-by-product basis. The Board of Directors of GSCC has determined that such allocation of clearance charges is unfair, because the costs incurred by GSCC for clearance are not based on total dollars cleared but, rather, are

based on the number of transactions cleared. Thus, a more equitable approach to the allocation of clearance charges is to do so based on the total number of deliver and receive settlement obligations.

This change would not affect the allocation of financing charges, which charges, to date, have been minimal.

(b) The proposed Fee Structure changes enhance the fairness of the current allocation of fees and charges and are, therefore, consistent with the requirements of section 17A of the Act⁴ and the rules and regulations thereunder applicable to a self-regulatory organization.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have been solicited; no written comments have been received. Members will be notified of the rule filing, and comments again will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act⁵ and subparagraph (e) of Rule 19b-4 thereunder because it revises GSCC's fee structure. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to file number SR-GSCC-90-03 and should be submitted by June 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-11259 Filed 5-14-90; 8:45 am]

BILLING CODE 9010-01-M

[Release No. 34-27998; File No. SR-GSCC-90-04]

May 7, 1990.

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Rule Change Relating to Modification to Rule 26 Concerning Billing Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78a(b)(1), notice is hereby given that on April 24, 1990, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue collecting members's anticipated fee obligations for the following month until July 31, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments if received on the proposed

not compare with matching trade data and, in addition, the participant receives advisory notices for 20 trades. GSCC will charge \$.50 per trade side data that compares, of \$37.50. Since the participant had more trades for which it received advisory notices than uncompared trades, GSCC will charge for the former trades at the rate corresponding to the manner in which the participant usually inputs trade data (which in this case is computer to computer), or \$.50 for 20 advisory notices, \$10.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A).

rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 4, 1990, the Commission approved proposed rule change SR-GSCC-89-15, which authorized GSCC to bill its members at the beginning of each month for such member's anticipated fee obligations for the following month (with an adjustment made to take into account any overcharge or undercharge made with regard to the member's activity during the previous month). The Commission's approval was issued on an accelerated, but temporary, basis until July 31, 1990, "in order to provide a comment period for persons interested in the proposal."

All GSCC members were advised of the billing change by an Important Notice issued on January 16, 1990. The billing change was implemented in February 1990. To date, GSCC has not received any written comments on the new billing procedure; moreover, it has received no adverse oral comments on the new procedure.

GSCC now respectfully requests an extension of the effective period of the advance billing procedure authorized by the Commission by its approval of proposed rule change SR-GSCC-89-15 of one year, until July 31, 1991. The Board of Directors and management of GSCC believe that extension of the effectiveness of the advance billing procedure is an appropriate, prudent measure that will help ensure that GSCC remains in a financially sound cash position as it continues to gradually increase its participant base.

(b) The proposed rule change will promote the prompt and accurate clearance of securities transactions for which GSCC is responsible and is, therefore, consistent with the requirements of section 17(A) of the 1934 Act, and the rules and regulations thereunder applicable to self-regulatory organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Securities and Exchange Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR-GSCC-90-04 and should be submitted by June 5, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-11260 Filed 5-14-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17478; 811-4461]

Applications, Hearings, Determinations, etc.; Liberty Mutual U.S. Tax-Free Guaranteed Securities Income Trust

May 8, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Liberty Mutual U.S. Tax-Free Guaranteed Securities Income Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 19, 1990, and amended on April 23, 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 June 5, 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, Federal Reserve Plaza, Boston, Massachusetts 02210, Attn: John L. Davenport.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (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 contracting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, an open-end investment company, registered under the 1940 Act on Form N-1A under section 8(b) of the 1940 Act on November 5, 1985, and its registration statement with respect to an indefinite number of shares became effective on February 7, 1986. Applicant was organized as a Massachusetts business trust on November 5, 1985.

2. On August 4, 1989, the Board of Trustees of Applicant approved and recommended to the shareholders an Agreement and Plan of Reorganization (the "Agreement") among Applicant, Liberty Advantage Trust on behalf of the Liberty Advantage U.S. Government Securities Fund (the "Advantage Government Fund"), and Applicant's investment adviser, Liberty Asset Management Company. The Agreement was approved on November 1, 1989, at a special meeting of Applicant's shareholders by more than two-thirds of the outstanding shares of Applicant.

3. Pursuant to the Agreement, Applicant's assets were transferred to the Advantage Government Fund on November 1, 1989, subject to the assumption of all of Applicant's liabilities by the Advantage Government Fund, in exchange for Advantage Government Fund shares having an aggregate net asset value equal to the net asset value of the assets so transferred as determined on the close of business of the preceding business day. Following the transfer, a total of 4,192,155.447 Advantage Government Fund shares having an aggregate net asset value of \$38,274,395.48 (\$9.13 per share) were distributed pro rata to Applicant's shareholder in liquidation of Applicant.

4. As of the close of business October 31, 1989, Applicant had outstanding 3,976,394.875 shares with an aggregate net asset value of \$38,274,395.48 (\$9.63 per share). All reorganization expenses, including legal and accounting fees, proxy printing costs, and mailing expenses, were borne by Applicant's investment adviser or an affiliate thereof.

5. There are no shareholders of Applicant to whom distributions in complete liquidation have not been made. The Applicant will take the necessary steps to terminate its legal existence under Massachusetts law.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

7. Applicant is not a party to any litigation or administrative proceedings. Applicant has no assets, debts or other liabilities.

8. Applicant has no shareholders and is engaged in only those business activities necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-11257 Filed 5-14-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17477; 311-4518]

Applications, Hearings, determinations, etc.; Liberty Mutual Tax Exempt Income Trust

May 8, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Liberty Mutual Tax Exempt Income Trust.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act and Rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 19, 1990, and amended on April 23, 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 June 5, 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, Federal Reserve Plaza, Boston, Massachusetts 02210, Attn: John L. Davenport.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney at (202) 272-3022, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (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. Applicant, an open-end investment company, registered under the 1940 Act on Form N-1A under section 8(b) of the 1940 Act on December 18, 1985, and its registration statement with respect to an indefinite number of shares became effective on February 14, 1986. Applicant was organized as a Massachusetts business trust on December 18, 1985.

2. On August 4, 1989, the Board of Trustees of Applicant approved and recommended to the shareholders an Agreement and Plan of Reorganization (the "Agreement") among Applicant, Liberty Advantage Trust on behalf of the Liberty Advantage Tax-Free Bond Fund (the "Advantage Tax-Free Fund"), and Applicant's investment adviser, Liberty Asset Management Company. The Agreement was approved on November 1, 1989, at a special meeting of Applicant's shareholders by more than two-thirds of the outstanding shares of Applicant.

3. Pursuant to the Agreement, Applicants assets were transferred to the Advantage Tax-Free Fund on November 1, 1989, subject to the assumption of all of Applicant's liabilities by the Advantage Tax-Free Fund, in exchange for Advantage Tax-Free Fund shares having an aggregate net asset value equal to the net asset value of the assets so transferred as determined on the close of business of the preceding business day. Following the transfer, a total of 1,626,064.553 Advantage Government Fund shares having an aggregate net asset value of \$15,528,921.09 (\$9.55 per share) were distributed pro rata to Applicant's shareholder in liquidation of Applicant.

4. As of close of business October 31, 1989, Applicant had outstanding 1,521,919.595 shares with an aggregate net asset value of \$15,528,921.09 (\$10.20 per share). All reorganization expenses, including legal and accounting fees, proxy printing costs, and mailing expenses, were borne by Applicant's investment adviser or an affiliate thereof.

5. There are no shareholders of Applicant to whom distributions in complete liquidation have not been made. The Applicant will take

necessary steps to terminate its legal existence under Massachusetts law.

6. Applicant has not, within the last 18 months, transferred any of its assets to a separate trust.

7. Applicant is not a party to any liquidation or administrative proceedings. Applicant has no assets, debts or other liabilities.

8. Applicant has no shareholders and is engaged in only those business activities necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-11258 Filed 5-14-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1199]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

1. *Summary:* Under the Foreign Missions Act (22 U.S.C. 4304), the Department of State is charged with providing certain benefits to foreign missions in the United States. One such benefit is the exemption from taxation. The following summarizes the information collection proposal submitted to OMB:

Type of request—Extension.
Originating office—Office of Foreign Missions.

Title of information collection—
Application for Exemption from Taxes on Utilities/Gasoline.

Form numbers—DSP-99/99A.

Frequency—On occasion.

Respondents—Foreign missions and personnel.

Estimated number of respondents—
8,000.

Average hours per response—1 minute.
Total estimated burden hours—664.

Section 3504(h) of Pub. L. 96-511 does not apply.

2. *Summary:* Section 2 of Executive Order 12532 of September 9, 1985 (codified in Pub. L. 99-440), provides that no U.S. Government agency may intercede with any foreign government on behalf of any U.S. national who does

not adhere to certain fair labor principles specified in the order. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of African Affairs.

Title of information collection—
Questionnaire Involving South Africa and Fair Labor Standards.

Frequency—Annual

Respondents—U.S. firms operating in South Africa.

Estimated number of respondents—30.

Average hours per response—30-40 hours.

Total estimated burden hours—1,200-1,500.

The final rule containing this collection of information was published in the *Federal Register* on December 31, 1985 (50 FR 53308).

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: April 26, 1990.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90-11274 Filed 5-14-90; 8:45 am]

BILLING CODE 4710-22-M

[Public Note 1200]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

SUMMARY: Issuance of solicitation documents for all acquisition actions over the small purchase limitation is required by the Federal Procurement Regulations and Federal Acquisition Regulations. Department of State procurement solicitations are issued and responses received in order to comply with the requirements of the FAR. The following summarizes the information collection proposal submitted to OMB.

Type of request—Extension.

Originating office—Bureau of

Administration, Office of Acquisition.

Title of information collection—

Procurement Solicitations.

Frequency—On occasion.

Respondents—Prospective Government Contractors.

Estimated number of respondents—
1,790.

Average hours per response—128 hours.

Total estimated burden hours—210,400.

Section 3504(h) of Pub. L. 96-511 does not apply.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395-7340.

Dated: April 26, 1990.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90-11275 Filed 5-14-90; 8:45 am]

BILLING CODE 4710-22-M

Bureau of Consular Affairs

[Public Notice 1198]

Certain Foreign Passports Validity

Under the provisions of section 212(a)(26) of the Immigration and Nationality Act, a nonimmigrant alien who makes application for a visa or for admission into the United States is required to be in possession of a passport which is valid for a minimum period of six months from the date of expiration of the initial period of the alien's admission into the United States or his or her contemplated initial period of stay authorizing the alien to return to the country from which he or she came or to proceed to and enter some other country during such period. By reason of the foregoing requirement, certain foreign governments have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of six months beyond the expiration date specified in the passport. These arrangements have the effect of extending the validity period of the foreign passport an additional six months notwithstanding the expiration date indicated in the passport.

This order adds St. Lucia to the list of those countries which have concluded such agreements. This order also deletes Cambodia from the list of those countries which have concluded such agreements; the United States neither maintains diplomatic relations with the present government of Cambodia nor recognizes it as an authority competent to issue passports.

The following governments have concluded agreements with the Government of the United States:

Algeria
 Antigua and Barbuda
 Australia
 Austria (Reisepass only)
 Bahamas, The
 Bangladesh (travel permits and passports)
 Belgium
 Bolivia
 Brazil
 Canada
 Chile
 Colombia
 Costa Rica
 Cote d'Ivoire
 Cuba
 Cyprus
 Denmark
 Dominican Republic
 Ecuador
 Egypt
 El Salvador
 Ethiopia
 Finland
 France
 Germany (FRG) (Reisepass and Kinderausweis)
 Greece
 Grenada
 Guatemala
 Guinea
 Guyana
 Honduras
 Hong Kong (Certificates of Identity and passports)
 Iceland
 India
 Iran
 Ireland
 Israel
 Italy
 Jamaica
 Japan
 Jordan
 Korea
 Kuwait
 Laos
 Lebanon
 Libya
 Liechtenstein
 Luxembourg
 Madagascar
 Malaysia
 Malta
 Mauritius
 Mexico
 Monaco
 Morocco
 Netherlands
 New Zealand
 Nicaragua (diplomatic and official passports only)
 Nigeria
 Norway
 Pakistan
 Panama
 Paraguay
 Peru
 Philippines
 Poland
 Portugal
 Qatar
 St. Kitts and Nevis
 St. Lucia
 St. Vincent and the Grenadines
 Senegal
 Singapore

Soviet Union (USSR) (Seamen only)
 Spain
 Sri Lanka
 Sudan
 Sweden
 Switzerland
 Syria
 Thailand
 Togo
 Trinidad and Tobago
 Tunisia
 Turkey
 United Arab Emirates
 United Kingdom
 Uruguay
 Venezuela
 Yugoslavia

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

Public Notice 954 of February 26, 1986 issued at 51 FR 6853 is hereby superseded.

Dated May 1, 1990.

Elizabeth M. Tamposi,
Assistant Secretary for Consular Affairs.
 [FR Doc. 90-11276 Filed 5-14-90; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 46928]

Aviation Proceedings; International Air Transport Association

The following agreement was filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers pursuant to 14 CFR part 303 may be filed June 5, 1990.

Parties: Members of the International Air Transport Association.

Date Filed: May 7, 1990.

Subject: Application of the International Air Transport Association for continued approval of and related antitrust immunity for the Provisions for the Conduct of the IATA Traffic Conferences. The application was required for review purposes under the provisions of 49 U.S.C. sections 412 and 414 by DOT Order 85-5-32, May 6, 1985. The application includes an agreement that would revise and amend the Provisions for which prior approval and immunity is requested.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
 [FR Doc. 90-11196 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Fitness Determination of Travelair, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination; Order 90-5-13, Order to show cause.

SUMMARY: The Department of Transportation is proposing to find Travelair, Inc., fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street SW., room 6401, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 24, 1990.

FOR FURTHER INFORMATION CONTACT:

Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: May 9, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90-11197 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Mississippi Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Mississippi Savings Bank, F.S.B., Batesville, Mississippi ("Savings Bank") on May 8, 1990.

Dated: May 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-11221 Filed 5-14-90; 8:45 am]

BILLING CODE 6720-01-M

**Mississippi Savings Bank;
Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Mississippi Savings Bank, Batesville, Mississippi ("Savings Bank") on May 8, 1990.

Dated: May 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-11219 Filed 5-14-90; 8:45 am]

BILLING CODE 6720-01-M

**Peoples Savings and Loan
Association, F.A.; Appointment of
Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301

of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Peoples Savings and Loan Association, F.A., Streater, Illinois ("Association"), on May 8, 1990.

Dated: May 9, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-11220 Filed 5-14-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 94

Tuesday, May 15, 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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, May 17, 1990, 11:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: (Time approximate—meeting will begin immediately after Public Hearing on Priorities for FY 1992).

MATTERS TO BE CONSIDERED:

Open to the Public

FY 92 Priorities Projects

The staff will brief the Commission on recommendations for priority projects for fiscal year 1992.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709

CONTACT PERSON FOR ADDITIONAL

INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Dated: May 10, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-11381 Filed 5-11-90; 12:41 pm]

BILLING CODE 6355-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

May 9, 1990.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: May 16, 1990, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public

documents may be examined in the Reference and Information Center.

Consent Agenda-Hydro, 916th Meeting—May 16, 1990, Regular Meeting (10:00 a.m.)

CAH-1.

Project No. 6913-005, Weber Basin Water Conservancy District

CAH-2.

Project No. 7019-010, City of Forsyth, Georgia

Consent Agenda-Electric

CAE-1.

Docket Nos. ER90-269-000, ER90-270-000, ER90-271-000, ER90-272-000 and ER90-273-000, Indiana Michigan Power Company

CAE-2.

Docket No. ER90-283-000, Cambridge Electric Light Company

CAE-3.

Docket No. ER90-284-000, New England Power Company

CAE-4.

Docket No. ER90-275-000, Central Illinois Light Company

CAE-5.

Docket No. ER90-159-000, South Carolina Electric & Gas Company

CAE-6.

Docket Nos. ER90-132-000 and ER90-133-000, Appalachian Power Company
Docket No. EL89-53-000, Blue Ridge Power Agency, Central Virginia Electric Cooperative, Inc., and Craig-Botetourt Electric Cooperative, Inc. v. Appalachian Power Company

CAE-7.

Docket No. ER89-493-000, Utah Power & Light Company

Docket No. ER89-494-000, Pacific Power and Light Company

Docket No. EC88-2-004, Utah Power & Light Company, PacifiCorp, PC/UP&L Merging Corporation

CAE-8.

Docket No. ER89-1021-000, Alaska Power Administration Snettisham Project

CAE-9.

Docket No. ER90-165-001, Pacific Gas and Electric Company

CAE-10.

Docket No. EL89-22-001, Wisconsin Public Service Corporation

CAE-11.

Docket Nos. ER89-582-001 and ER89-596-001, New England Power Company

CAE-12.

Docket No. ER84-560-027, Union Electric Company

CAE-13.

Docket No. EL90-6-000, Illinois Power Company,

CAE-14.

Docket No. EL89-48-000, Wisconsin Power & Light Company

CAE-15.

Docket No. EL89-55-000, New England Power Company

CAE-16.

Docket No. EL90-16-000, Louisiana Public Service Commission, Mississippi Public Service Commission, State of Mississippi, Arkansas Public Service Commission and City of New Orleans v. System Energy Resources, Inc. and Entergy Services, Inc.

Docket No. ER89-698-000, System Energy Resources, Inc.

CAE-17.

Docket Nos. ER82-774-015, ER83-209-000 and ER83-227-000, Tapoco, Inc.

Docket Nos. ER82-829-000 and ER83-219-000, Nantahala Power and Light Company

Docket No. EL83-6-000, Lacey H. Thornberg, Attorney General of the State of North Carolina v. Aluminum Company of America, Tapoco Inc., and Nantahala Power and Light Company

Docket No. EL84-29-000, Town Highland, North Carolina, *et al.* v. Nantahala Power and Light Company

CAE-18.

Docket Nos. ER-304-000, ER88-305-000 and ER 89-31-000, Niagara Mohawk Power Corporation

CAE-19.

Docket No. QF89-274-001, Selkirk Cogeneration Partners, L.P.

Consent Agenda—Gas and Oil

CAG-1.

Docket No. TM90-4-000, Texas Gas Transmission Corporation

CAG-2.

Docket Nos. TA90-1-41-000, 001 and 002, Pauite Pipeline Company

CAG-3.

Docket No. TA89-1-15-005, Mid Louisiana Gas Company

CAG-4.

Docket No. RP90-102-000, Tarpon Transmission Company

CAG-5.

Docket No. RP90-2-002, Williston Basin Interstate Pipeline Company

CAG-6.

Docket No. RP89-183-009, Williams Natural Gas Company

CAG-7.

Docket Nos. RP89-251-004, 005, 000, TQ90-3-1-001, and 002, Alabama-Tennessee Natural Gas Company

CAG-8.

Docket No. RM87-34-062, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

CAG-9.

Docket Nos. TA90-1-7-001 and RP90-45-002, Southern Natural Gas Company

CAG-10.

Docket No. TA90-1-40-003, Raton Gas Transmission Company

CAG-11.

Docket Nos. RP88-239-014, RP89-11-008 and RP89-129-004, Trunkline Gas Company

CAG-12.
Docket Nos. RP90-4-004 and RP89-48-009,
Transwestern Pipeline Company

CAG-13.
Docket No. RP87-7-066, Transcontinental
Gas Pipe Line Corporation

CAG-14.
Docket Nos. RP88-228-029, RP88-249-004,
RP89-29-008, RP89-84-005, RP89-149-003
and PL89-2-003, Tennessee Gas Pipeline
Company

CAG-15.
Docket Nos. RP85-209-027, RP86-93-006,
RP86-158-012, CP86-246-005, RP87-34-
012, TC88-6-010, RP88-8-012, RP88-27-
020, RP88-92-020, RP88-265-000, 006,
RP88-263-014, RP88-264-016, RP84-42-
008, RP89-138-006, CP88-8-007, CP88-
329-009, CP88-478-003 and IN86-5-004,
United Gas Pipe Line Company

Docket No. CP88-440-003, Southern
Natural Gas Company

Docket No. CP87-524-010, Texas Gas
Transmission Corporation

CAG-16.
Docket Nos. CP82-487-026 and 027 (Phase
II), Williston Basin Interstate Pipeline
Company

CAG-17.
Docket Nos. RP90-65-001 and RP88-211-
000, CNL Transmission Corporation

CAG-18.
Docket Nos. RP90-69-002 and RP87-30-034
(Phase II), Colorado Interstate Gas
Company

CAG-19.
Docket No. RP90-57-002, Algonquin Gas
Transmission Company

CAG-20.
Omitted

CAG-21.
Docket No. RP89-151-002, Transwestern
Pipeline Company

CAG-22.
Docket No. RP89-250-001, Columbia Gas
Transmission Corporation

CAG-23.
Docket Nos. RP88-84-000, 001, 010, 014, 015,
019, 027 and RP89-189-002, Natural Gas
Pipeline Company of America

CAG-24.
Docket No. RP90-12-004, Colorado
Interstate Gas Company

CAG-25.
Docket No. RP86-168-016, Columbia Gas
Transmission Corporation

Docket No. RP86-167-012, Columbia Gulf
Transmission Company

CAG-26.
Docket No. CP89-2092-001, Kentucky West
Virginia Gas Company

CAG-27.
Docket No. RB87-144-002, Northern Border
Pipeline Company

CAG-28.
Docket No. TA90-1-9-000, Tennessee Gas
Pipeline Company

CAG-29.
Docket No. RP89-73-000, Pelican Interstate
Gas System

CAG-30.
Docket Nos. ST 89-1708-001, ST89-1775-
001 and ST88-2555-004, Louisiana
Intrastate Gas Corporation

CAG-31.
Docket No. ST89-4756-000, Supenn Pipeline

CAG-32.
Docket No. CP88-27-000, Quintana
Petroleum Corporation NGPA § 103
Determination, State of Louisiana
Department of Natural Resources

CAG-33.
Docket No. CP89-42-000, Transwestern
Pipeline Company v. Corinne Grace

CAG-34.
Docket No. CP73-184-006, Colorado
Interstate Gas Company, a Division of
Colorado Interstate Gas Company

Docket No. CI73-485-005, CIG Exploration,
Inc.

CAG-35.
Docket No. CI86-168-007, Tenngasco
Corporation and Tenngasco Exchange
Corporation

Docket No. CI86-27-008, Transco Energy
Marketing Company

Docket No. CI87-307-004, MidCon
Marketing Corporation

CAG-36.
Docket Nos. CP89-1991-003 and CP89-
2001-003, Mississippi River Transmission
Corporation

CAG-37.
Docket Nos. CP88-723-001, CP88-755-001,
CP88-665-002 and CP89-341-001, Viking
Gas Transmission Company

CAG-38.
Docket No. CP89-1627-001, Williams
Natural Gas Company

CAG-39.
Docket No. CP88-332-015, El Paso Natural
Gas Company

CAG-40.
Docket No. CP90-14-002, Transwestern
Pipeline Company

CAG-41.
Docket No. CP89-1554-002, Colorado
Interstate Gas Company

CAG-42.
Docket No. CP87-528-001, Southern
Natural Gas Company

CAG-43.
Docket No. CP88-665-001, Viking Gas
Transmission Company

CAG-44.
Docket Nos. CP90-1233-000 and CP90-
1246-000, Trunkline Gas Company

CAG-45.
Docket No. CP89-124-000, Interstate Power
Company

CAG-46.
Docket No. CP87-396-000, Northwest
Pipeline Corporation

CAG-47.
Omitted

CAG-48.
Omitted

CAG-49.
Docket No. CP90-78-000, Mississippi River
Transmission Corporation

CAG-50.
Docket Nos. CP88-760-000, 001, 002 and
CP89-63-000, Transcontinental Gas Pipe
Line Corporation

CAG-51.
Docket No. CP89-2067-000, Southern
Natural Gas Company

CAG-52.
Docket No. CP89-1929-000, Columbia Gas
Transmission Corporation

CAG-53.
Docket No. CP89-324-000, Panhandle
Eastern Pipe Line Company

CAG-54.
Omitted

CAG-55.
Docket No. CP81-296-015, Tennessee Gas
Pipeline Company

CAG-56.
Docket No. CP88-692-000, Trunkline LNG
Company

Hydro Agenda

H-1.
Project Nos. 1417-012, Central Nebraska
Public Power and Irrigation District
Project No. 1835-027, Nebraska Public
Power District. Order on rehearing of
order prescribing interim minimum flows
pending relicensing.

H-2.
Project No. 8142-016, Henwood Associates,
Inc. Order on rehearing of order
addressing minimum flows and
applicability of Federal Land
Management and Policy Act.

Electric Agenda

E-1.
Docket No. RM87-26-003, Filing Fees
Under the Independent Offices
Appropriations Act of 1952. NOPR to
revise the Commission's filing fees for
electric rate filings.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Reserved

II. Producer Matters

PF-1.
Reserved

II. Pipeline Certificate Matters

PC-1.
Docket Nos. CP89-2047-001 and CP89-
2048-001, Kern River Gas Transmission
Company

Docket Nos. CP89-1-003 and CP89-2-002,
Mojave Pipeline Company

Docket Nos. CP90-41-001, CP87-479-013
and CP87-480-012, Wyoming-California
Pipeline Company. Order on requests for
rehearing and/or clarification of orders
granting optional certificate authority to
construct and operate facilities to serve
the enhanced oil recovery market in Kern
County, California.

Lois D. Cashell,
Secretary.

[FR Doc. 90-11324 Filed 5-10-90; 4:37 pm]

BILLING CODE 6717-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the
"Government in the Sunshine Act" (5
U.S.C. 552b), notice is hereby given that
at 2:45 p.m. on Tuesday, May 8, 1990, the
Board of Directors of the Federal
Deposit Insurance Corporation met in
closed session to consider the following
matters:

Administrative enforcement proceedings.
Matters relating to the probable failure of certain insured banks.

Matters relating to the Corporation's liquidation activities.

Recommendation regarding the Corporation's corporate activities.

Matters relating to insured institutions that are experiencing financial difficulties.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street NW., Washington, DC.

Dated: May 8, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-11360 Filed 5-11-90; 10:36 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Friday, May 18, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. Discussion of Voluntary Guide to Conduct for Senior Officials of 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 10, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-11346 Filed 5-11-90; 10:36 am]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of May 14, 21, 28, and June 4, 1990

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of May 14

Monday, May 14

10:00 a.m.

Briefing on Status of Nine Mile Point 1 Restart (Public Meeting)

Tuesday, May 15

2:30 p.m.

Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, May 16

2:00 p.m.

Briefing on Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 21—Tentative

There are no Commission meetings scheduled for the Week of May 21

Week of May 28—Tentative

Thursday, May 31

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 4—Tentative

Friday, June 8

10:00 a.m.

Briefing on IIT Report on Vogtle Event (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 5-0 on May 4, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that affirmation of "License Fees—Final Rule" (Public Meeting), held May 10, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this data.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292

CONTRACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

Dated: May 10, 1990.

William M. Hill,

Office of the Secretary.

[FR Doc. 90-11391 Filed 5-11-90; 2:15 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 55, No. 94

Tuesday, May 15, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 280

[Docket No. R-89-1403; FR-2478]

RIN 2502-AE45

Nehemiah Housing Opportunity Grants Program

Correction

In rule document 89-12131 beginning on page 22248, in the issue of Monday,

May 22, 1989, make the following correction:

§ 280.207 [Corrected]

On page 22263, in the first column, in § 280.207 (e)(2)(iii), in the eighth line, "24 CFR (b)(2)(ii)" should read "24 CFR 35.24(b)(2)(ii)".

BILLING CODE 1505-01-D

line insert "which" after the word "organization".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Targeted Training Grants

Correction

In notice document 90-10008 beginning on page 18192 in the issue of Tuesday, May 1, 1990, make the following correction:

On page 18193 in the second column, under **Eligible Applicants**, in the first

Federal Register

**Tuesday
May 15, 1990**

Part II

Department of Transportation

**Research and Special Programs
Administration**

49 CFR Part 173

**Specifications for Tank Car Tanks;
Advance Notice of Proposed Rulemaking**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 173**

[Docket No. HM-175A; Notice No. 90-8]

RIN 2137-AB89

Specifications for Tank Car Tanks

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: RSPA and the Federal Railroad Administration (FRA) are considering the development of regulations that would improve the level of safety of tank car tanks. The intended effect of such regulations would be a reduction in the risk of violent rupture and release of hazardous materials when tank car tanks are involved in accidents. This notice solicits comments on the costs and safety benefits that would be derived should the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) be amended to: (1) Require thermal protection or head protection, or both, on new and existing tank car tanks that are constructed of aluminum or nickel, or that are used to transport certain hazardous materials; (2) disallow the use of the half-head shield as an option to meet head protection requirements; (3) prohibit the use of tank car tanks that have a manway opening located below the liquid level of the material transported; (4) disallow the use of so-called "non-pressure" tank car tanks to transport materials poisonous by inhalation; (5) increase the start-to-discharge pressure setting on certain tank car tanks; (6) establish specifications for the securement and accident survivability of tank car tank closure fittings; and (7) phase out certain "grandfather" provisions. This notice also solicits comments on what operational changes or design modifications should be considered in place of the retrofitting of tank car tanks that do not conform to the safety requirements for new tank car tanks.

DATES: Comments must be received on or before August 21, 1990.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and be submitted in five copies. If confirmation of receipt of comments is desired,

include a self-addressed stamped postcard showing the docket number (i.e., Docket HM-175A). The Dockets Unit is located in Room 8417 of the Nassif Building, 400 7th Street SW., Washington, DC 20590-0001. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, RRS-2, Washington, DC 20590-0001, Telephone (202) 366-0897.

SUPPLEMENTARY INFORMATION:**Background**

In the 1960's and 1970's, there were a number of serious accidents involving the rail transportation of hazardous materials in tank car tanks. In response to these accidents, the Department of Transportation (DOT) commenced a review of the tank car tank specifications. As a result of this review, three rulemakings were promulgated. On September 15, 1977, a final rule in Docket HM-144 (42 FR 46306) was published which required that (1) new and existing class DOT 112 and 114 tank car tanks transporting flammable gases be equipped with thermal protection (large capacity safety relief valves and high temperature thermal insulation), head protection (puncture protection for the lower half of the tank car tank heads), and coupler vertical restraint systems (i.e., shelf couplers); (2) new and existing class DOT 112 and 114 tanks transporting anhydrous ammonia be equipped with head protection and shelf couplers; and (3) new and existing class DOT 112 and 114 tanks transporting other commodities be equipped with shelf couplers.

On January 29, 1981, a final rule in Docket HM-174 (46 FR 8005) was published which required that (1) new class DOT 105 tanks transporting flammable gases be equipped with thermal protection, head protection, and shelf couplers; (2) new class DOT 105 tanks transporting anhydrous ammonia be equipped with head protection and shelf couplers; and (3) new and existing DOT specification tank car tanks transporting other commodities be equipped with shelf couplers. The preamble of the latter final rule noted that DOT had considered, but rejected, requiring full tank head protection instead of allowing half-head shields. The majority of commenters to the HM-174 rulemaking opposed a full-head protection requirement on the basis that the Federal Railroad Administration (FRA) did not identify any accident

where a car equipped with shelf couplers and half-head shield had failed to protect the tank head. In response to these commenters, DOT agreed that there was not at that time any clearly identifiable additional margin of safety provided by a full tank head puncture resistance system that would warrant federally mandating the full tank head protection system. However, DOT noted with approval some evidence of an evolving industry practice to provide full tank head protection.

On January 27, 1984, a final rule in Docket HM-175 (49 FR 3468) was published which required that (1) existing class DOT 105 and 111 tanks (with capacities exceeding 18,500 gallons) transporting flammable gases be equipped with thermal protection, head protection, and shelf couplers and (2) existing class DOT 105 tanks (with capacities exceeding 18,500 gallons) transporting anhydrous ammonia be equipped with head protection and shelf couplers. In the preamble to the latter final rule, it was noted that FRA and the Research and Special Programs Administration (RSPA) would continue to evaluate the need for new rules for tank car tanks used for hazardous materials.

The primary thrust of the rulemakings published under Dockets HM-144, HM-174, and HM-175 was directed at tank car tanks carrying anhydrous ammonia, flammable gases, and ethylene oxide. Those commodities had been released in railroad accidents resulting in deaths, injuries, and substantial property damage, and the safety features mandated in those rulemakings have been very effective in reducing the frequency and severity of accidents involving those commodities. Unfortunately, those rulemakings were not sufficient to prevent a tragic incident at Ridgefield, Washington, on January 14, 1980. In that incident, a train struck a mud-slide, causing the derailment of 23 cars. The top shelf of an anhydrous ammonia DOT Specification 112S340W tank car tank (equipped with shelf couplers and half-head shields) broke, allowing the coupler of an adjacent box car to vertically uncouple, rise up, and ram the head of the anhydrous ammonia tank above a half-head shield. More than 20,000 gallons of ammonia were released and two train crew members subsequently died from exposure to the ammonia.

The discharge of methyl isocyanate in Bhopal, India, in 1984 heightened the concerns of RSPA and FRA for the safe transportation of highly toxic materials. Although that incident was not transportation related, it did

demonstrate the tragic consequences that could occur if there were large releases of materials that are poisonous by inhalation. On October 8, 1985, a final rule in Docket HM-196 (50 FR 41092) was published which superseded the existing tank car tank authorizations for certain toxic materials. For those toxic materials, only tank cars authorized for Poison A materials or tank cars approved by RSPA are authorized.

On May 5, 1987, and November 6, 1987, notices of proposed rulemaking in Docket HM-181 were published proposing to require head protection and thermal protection on newly built tank car tanks that transport highly toxic materials or materials currently classed for domestic transportation as flammable liquids, but which are classed internationally as flammable gases. In response to those notices, several commenters have proposed that certain changes be made to the specifications for existing tank car tanks. The Chlorine Institute (CI) recommended that half-head shields be required on existing chlorine cars. The Union Pacific Railroad Company, on behalf of a coalition of three chemical companies and four rail carriers, recommended that existing tank car tanks be retrofitted with full tank head shields, except that existing tanks which already have half-head shields would not have to be retrofitted. The coalition further recommended that existing so-called "non-pressure" tank car tanks not be authorized to transport highly toxic materials, except in certain situations. The coalition further opposed grandfathering of a tank car tank based upon the small tank capacity. The National Transportation Safety Board (NTSB) has recommended, in NTSB Recommendation R-85-105 involving a February 23, 1985, derailment in Jackson, South Carolina, that railroad tank cars used to transport materials with a DOT Emergency Response Guidebook recommended evacuation distance of $\frac{1}{2}$ mile or more be equipped with head shield protection and, as applicable, with thermal insulation. In its comments to Docket HM-181 dated March 1, 1988, the NTSB stated "The Safety Board believes that it is time to stop permitting tank cars that fail to meet current minimum safety requirements to be used to transport dangerous materials under grandfather clauses. As a minimum, the DOT should establish a specific date by which all tank cars would have to comply with the new requirements." Other commenters supported some or all of the recommendations advanced by the CI, the coalition, or the NTSB.

However, some other commenters opposed those recommendations.

On April 3, 1983, at Denver, Colorado, a DOT specification 111A60ALW1 tank car tank, constructed of aluminum and loaded with nitric acid, impacted an empty boxcar. Upon impact, the end sill of the empty boxcar rode over the coupler of the nitric acid tank car tank and punctured the tank head. Nitric acid spilled from the tank and formed a vapor cloud which dispersed over the area. The NTSB concluded that had the nitric acid tank car tank been equipped with head shields, the tank probably would not have been punctured and the release of the material probably would not have occurred. The NTSB recommended (Recommendations R-85-61, R-85-63, and R-85-64) that RSPA, FRA, and the Association of American Railroads (AAR) "conduct a full testing and evaluation program to develop a head shield to protect DOT specification aluminum tank car ends from puncture and mandate installation of the head shield at an early date." FRA has sponsored such a program and the tentative research results indicate that aluminum tank car tanks may be punctured in impacts at low speeds. RSPA and FRA are not aware of any puncture tests of nickel tank car tanks, but based upon the physical properties of nickel, believe that nickel tank car tanks might also be punctured at low speeds. RSPA and FRA are also concerned about the behavior of aluminum tank car tanks in fires. The structural integrity of aluminum alloy plate is very adversely affected by high temperature, with melting occurring at about 1200 degrees Fahrenheit.

On September 8, 1987, in New Orleans, Louisiana, butadiene leaked from a DOT 114J340W tank car tank and on September 9, 1987, the vapors ignited, resulting in the engulfment of both bridge spans of a nearby section of Interstate 10. The tank car tank incorporated a bottom manway in its design. In its investigation of this incident (Recommendation R-88-59), the NTSB concluded that "it is unlikely that a hazardous materials leak through a bottom manway during transportation could be stopped" and the Board urged that FRA "act immediately to prohibit the use for transportation of hazardous materials tank cars that have a manway opening located below the liquid level of the material transported." It is the understanding of RSPA and FRA that there are no longer any United States tank car tanks equipped with bottom manway openings, but that there are still Canadian and Mexican tank car tanks equipped with bottom manway

openings that might be used for transporting hazardous materials in the United States.

For class DOT 105, 109, 111A100, 112, and 114 tank car tanks, the Hazardous Materials Regulations (HMR) generally require that the start-to-discharge pressure setting of safety relief valves be between 72 percent to 78 percent of the tank test pressure (for certain commodities the pressure setting may, as an alternate, be between 80 percent to 85 percent of the tank test pressure). However, for class DOT 103, 104, 111A60, and 115 tank car tanks, the HMR generally require that the start-to-discharge pressure setting of safety relief valves be between 53.3 percent to 63.3 percent of the tank test pressure (for certain commodities the pressure setting may, as an alternate, be between 70 percent to 80 percent of the tank test pressure; for certain tank car tanks built before January 1, 1959, the pressure setting may, as an alternate, be between 36.7 percent to 46.7 percent of the tank test pressure; and for certain tank car tanks built before August 31, 1956, the pressure setting may, as an alternate, be between 70 percent to 80 percent of the tank test pressure). The start-to-discharge pressure settings for AAR specification 206W tank car tanks are the same as for class DOT 115 tank car tanks. RSPA and FRA are concerned that the low start-to-discharge pressure settings on the safety relief valves of class DOT 103, 104, 111A60, and 115 tank car tanks and on AAR specification 206W tank car tanks may cause the unnecessary discharge of lading in yard impacts and in accidents not resulting in tank fire engulfment. It should be noted that on June 12, 1989, RSPA published in the Federal Register (54 FR 24982) a final rule in Docket HM-183 that requires that the start-to-discharge pressure settings on the safety relief valves of certain cargo tanks be increased.

On July 30, 1989, in Altoona, Iowa, two locomotives collided and denatured alcohol from two derailed tank car tanks was released through the safety relief valves and the manway domes and a fire ensued. As a result of its investigation, NTSB recommended (Recommendations R-89-48, R-89-49, R-89-53, and R-89-54) that RSPA and FRA amend the HMR to require that "closure fittings on hazardous materials rail tanks be designed to maintain their integrity in accidents that are typically survivable by the rail tank" and "specifications for securing closure fittings, such as minimum torque values for sealing bolted closures and gasket specifications, be determined and

provided by tank car designers and manufacturers."

Information Desired by RSPA and FRA

RSPA and FRA have decided to sever from Docket HM-181 and place in this docket, those issues relating to (1) full-head protection versus half-head protection, (2) the phasing out of various "grandfather" provisions in the HMR, (3) the extension of head protection and thermal protection requirements to additional commodities, (4) the use of so-called "non-pressure" tank car tanks to transport materials poisonous by inhalation, (5) the start-to-discharge pressure setting of safety relief valves on tank car tanks, and (6) the securement and integrity of tank car tank closures. Before proceeding to develop specific regulations, RSPA and FRA believe that they need additional information and are therefore requesting comments on various topics. Some of the questions posed in this notice were raised earlier in an advanced notice of proposed rulemaking in Docket HM-175 (45 FR 48668; July 21, 1980). However, RSPA and FRA believe that some of the information obtained during that rulemaking may be obsolete.

Specific written comments are requested for questions 1 through 10 below. Following these questions are some supplementary remarks which are intended to clarify the information needed by RSPA and FRA.

1. What would be the costs and benefits of requiring thermal protection or head protection or both thermal protection and head protection on new and existing tank car tanks that are now required to be equipped with such protection and that are used to transport flammable gases, nonflammable gases, ethylene oxide, materials poisonous by inhalation, and reactive materials (i.e., materials that may cause tank car tank rupture from violent decomposition or polymerization when the materials are exposed to air, moisture, or elevated temperatures)? Commenters are also requested to identify any specific groups of cars for which retrofit would be technologically or economically difficult and to discuss and document any such difficulties. Commenters are further requested to identify any specific group of cars which have design improvements which, although not conforming to the requirements of part 179 of the HMR for thermal protection and head protection, may provide some thermal protection or head protection. Comments are also requested on appropriate retrofit schedules and priorities. Commenters who believe that thermal protection and/or head protection should be required on tanks carrying commodities

other than those discussed above, are requested to identify those commodities and to discuss why they believe additional protection may be needed for those commodities.

2. What would be the costs and benefits of requiring thermal protection or head protection or both thermal protection and head protection on new and existing tank car tanks that are constructed of aluminum or nickel? Commenters are also requested to identify any specific groups of cars for which retrofit would be technologically or economically difficult and to discuss and document any such difficulties. Commenters are further requested to identify any specific group of cars which have design improvements which, although not conforming to the requirements of part 179 of the HMR for thermal protection and head protection, may provide some thermal protection or head protection. Comments are also requested on appropriate retrofit schedules and priorities.

3. What would be the costs and benefits of disallowing the half-head shield as an option to meet head protection requirements? In discussing this question, commenters are requested to consider a ban on the half-head shield option for both new and existing tank cars. Commenters are also requested to identify any accidents (not included in Reports No. RA-02-5-51 and RA-02-6-55 of the Railway Progress Institute and AAR or Report No. FRA-RP-72-01 of the FRA) in which the upper half of a tank head was punctured.

4. What would be the costs and benefits of prohibiting from hazardous materials service the use of tank car tanks that have a manway opening located below the level of the liquid being transported? Commenters are requested to consider a ban on such openings for both new and existing tank car tanks.

5. What would be the costs and benefits of increasing the start-to-discharge pressure setting of safety relief valves on class DOT 103, DOT 104, DOT 111A60, and DOT 115 tank car tanks and on AAR specification 206W tank car tanks so that the safety relief valves will not open in normal transportation service or when the tank car tank is involved in an accident involving a rollover without any fire engulfment? Commenters are requested to consider such a requirement on both new and existing tank car tanks. Commenters are also requested to identify any commodities for which an increase in the safety relief valve start-to-discharge pressure setting might

result in a decrease in the level of safety.

6. What, if any, specifications should be established so that tank car tank closure fittings will maintain their integrity in accidents that are typically survivable by the tank car tank? Commenters proposing specifications are requested to discuss the costs and benefits of the standards.

7. What, if any, specifications (such as gasket specifications, gasket sealant specifications, and minimum torque values for sealing bolted closures) should be established for securing closure fittings? Commenters proposing specifications are requested to discuss the costs and benefits of the standards.

8. What would be the costs and benefits of disallowing the use of so-called "non-pressure" tank car tanks to transport materials poisonous by inhalation? In discussing this question, commenters are requested to consider both a ban on new tank car tanks and a ban on existing tank car tanks. Commenters are also requested to identify any group of non-pressure tank car tanks that have special design features that make the conversion of those tanks to less hazardous service either technologically or economically difficult and to discuss and document any such difficulties. Commenters are further requested to discuss appropriate schedules for phasing out the use of non-pressure tank car tanks for materials poisonous by inhalation.

9. What would be the costs and benefits of phasing out the various grandfather clauses that permit hazardous materials to be transported in tank car tanks that do not meet the safety requirements for newly built tank car tanks? Commenters are also requested to discuss the scheduling of the phasing out of these clauses. RSPA and FRA are particularly interested in comments concerning the grandfathering of tank car tanks constructed of materials no longer authorized for new construction.

10. What operational changes or design modifications should be considered in lieu of the retrofitting or banning of tank car tanks that do not meet the safety requirements for new tank car tanks? RSPA and FRA are particularly interested in comments relating to operational changes or design modifications that might be considered for tank car tanks constructed of materials no longer authorized for new construction. What would their costs and benefits be?

Commenters are requested to provide the following information, as

appropriate, when replying to questions one through ten:

A. For each retrofit action being considered, the number of cars that would be required to be retrofitted. Numbers should be grouped by type of retrofit required (e.g., head shields, thermal protection), car capacity, car miles, car age, and projected productive life remaining in the subject service. Information is also requested on car utilization by car type and commodity service (e.g., the average number of trips per year, average number of days at consignors and consignees, average number of days at carrier terminal(s) and intermediate yard(s) in a loaded and unloaded condition).

B. For each retrofit action being considered, the number of cars that would be transferred from one commodity service to another commodity service to avoid the costs associated with a proposed retrofit and the economic/financial accounting basis on which this decision would be based. Numbers should be grouped by type of retrofit required (e.g., head shields, thermal protection), car capacity, and car miles in a loaded and unloaded condition, car age, commodity service, and projected productive life remaining in new commodity service.

C. The number of new cars, and their projected capacities and costs, which

would be purchased to replace the diverted cars referred to in (B) above.

D. The number of new cars not in hazardous materials service, and their projected capacities and costs, which would be purchased absent the transferral of cars to avoid the costs associated with a proposed retrofit.

E. For each retrofit action being considered, the itemized cost of the retrofit, in terms of full-head protection versus half-head protection, and thermal protection. Commenters are requested to break down costs into material costs and labor costs, and average work hours needed to accomplish the retrofit. Commenters are also requested to discuss out-of-service time, if any, necessitated for retrofit, the average amount of time involved in the routine annual repair/maintenance of rail tank car tanks, the average number of times per year a car is cleaned, the costs involved in cleaning a car, any scheduling problems that might occur in taking cars out of service for retrofit, the total time that it would take to complete a retrofit program without causing a major disruption in operations, and any other associated costs with retrofit.

F. For new construction, the incremental cost of (a) half-head protection versus no-head protection, (b) full-head protection versus no-head protection, (c) full-head protection versus half-head protection, and (d)

thermal protection versus no thermal protection.

Administrative Notices

Costs and safety benefits associated with the contemplated rulemaking action are essentially unknown at present. However, based on the limited information available, RSPA and FRA believe that this rulemaking (1) is not "major" under executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); (5) does not have sufficient Federalism implications to warrant preparation of a Federalism assessment; and, (6) will not have a significant economic impact on a substantial number of small entities. A preliminary regulatory evaluation will be prepared based on comments to this advance notice of proposed rulemaking.

Issued in Washington, DC, on May 9, 1990, under authority delegated in 49 CFR part 106, Appendix A.

John J. O'Connell, Jr.,

Acting Director, Office of Hazardous Materials Transportation.

[FR Doc. 90-11199 Filed 5-14-90; 8:45 am]

BILLING CODE 4910-80-M

Register

**Tuesday
May 15, 1990**

Part III

Department of Justice

**Office of Juvenile Justice and
Delinquency Prevention**

**Organization and Administrative
Management for Private Volunteer
Organizations Involved With Missing and
Exploited Children; Issuance of
Solicitation for Applications; Notice**

DEPARTMENT OF JUSTICE**Office of Juvenile Justice and Delinquency Prevention/National Institute of Juvenile Justice and Delinquency Prevention****Organization and Administrative Management for Private Volunteer Organizations Involved With Missing and Exploited Children; Issuance of Solicitation for Application**

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Issuance of solicitation for applications to provide conferences, training and technical assistance in organization and administrative management for private volunteer organizations involved with missing and exploited children.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Institute of Juvenile Justice and Delinquency Prevention (NIJDP), pursuant to section 404(b)(2)(D) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C.A. 5773(b)(2)(D)) as amended, is sponsoring a program to provide training and technical assistance to those agencies involved in assisting missing and exploited children and their families.

Public and Private-nonprofit organizations which can show documented experience operating nationwide training programs and conferences in organization and administrative management for private voluntary agencies involved with children and young people are invited to submit applications to enter into a cooperative agreement with the OJJDP.

OJJDP will select the applicant which presents the most cost effective approach, and which best responds to the specifications in the solicitation, taking cognizance of their organizational capability to provide training and technical assistance to organizations serving missing and exploited children. In addition the applicant must agree to cooperate with the National Center for Missing and Exploited Children in all activities related to this project. The project period is for eighteen months. The budget period is eighteen months during which at least up to seven regional training conferences will be held. Technical assistance will be provided continually, and guidelines and other materials for the effective organization and administration of missing and exploited children agency operations will continue to be developed and disseminated. The budget should not exceed \$300,000. Applicants are

encouraged to present cost-competitive proposals.

FOR FURTHER INFORMATION CONTACT: Training, Dissemination and Technical Assistance Division, OJJDP, (202) 724-7573, 633 Indiana Avenue, NW., Washington, DC 20531.

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I. Introduction

The problem of missing and exploited children is one of the most pressing concerns in our country today. While no one is sure of the exact number, it is estimated that thousands of children are missing from their homes each year. Many of them become victims of physical or sexual abuse or even victims of homicide.

The U.S. Congress took important steps to resolve this problem by passing the Missing Children Act in 1982 and, later, the Missing Children's Assistance Act in 1984. A National Center for Missing and Exploited Children (NCMEC) funded by the Office of Juvenile Justice and Delinquency Prevention was opened and is located in the Washington, DC, area.

The NCMEC serves as one clearinghouse of information and assistance concerning missing children and the criminal and sexual exploitation of children. Nationwide awareness campaigns are conducted to let families know what to do if a child is missing. Through its toll free number (1-800-843-5678), the Center helps coordinate information on missing and exploited children, which may lead to the location and recovery of a missing child. The Center is linked to the FBI's National Crime Information Center's Missing Person File (NCIC/MPF). The Center also provides training for law enforcement personnel to assist them in recognizing when a runaway is a victim of abuse and how to obtain help for that child. It helps law enforcement agencies to understand the link between the runaway child and the crimes of theft, drug abuse, prostitution, and pornography.

In order to enhance the effectiveness of the Missing Children's Act programs, the National Center for Missing and Exploited Children, and other missing and exploited children programs, it is

necessary to overcome some of the prevalent problems that national efforts of law enforcement, citizen groups and private organizations have in responding to the problem.

The many organizations involved in assisting missing and exploited children and their families are located in various cities around the nation. Although initiated by capable and dedicated persons, many lack the necessary experience in organization and management to operate their programs effectively.

These organizations need technical assistance in administration and management, volunteer recruitment and training, fund raising, and working with boards of directors, police and sheriff's departments, and other public agencies.

II. Program Goals and Objectives**A. Goals of the Project**

(1) To achieve a high level of skill, sophistication and expertise among the private agencies, the National Center, and other appropriate organizations serving missing and exploited children.

(2) To assist these agencies and the National Center for Missing and Exploited Children through increased cooperation, information dissemination, the transfer of techniques and increased public awareness of the problem.

B. Objectives

(1) To provide training as necessary in organization and administrative management for private voluntary organizations involved with missing and exploited children.

(2) To hold up to seven regional conferences during the period of the Cooperative Agreement.

(3) To provide continual technical assistance.

(4) To continue to use host sites for training and technical assistance.

(5) To continue the development and dissemination of guidelines and other materials for the successful operation of missing children agencies.

III. Major Responsibilities of the Successful Applicant

The organization selected to conduct this project will be responsible for all aspects of the successful implementation and completion of all functions and activities of the project, whether carried out directly or contracted to other organizations or individuals, and for the development of all products. The applicant must cooperate with the National Center for Missing and Exploited Children and other major missing children resources in all activities related to this project.

IV. Dollar Amount and Duration

One cooperative agreement will be awarded for an eighteen month project period.

The projected budget for the project period of this cooperative agreement is approximately \$300,000.

V. Eligibility Requirements

Applications are invited from public and private institutions of higher education, public agencies, and private nonprofit organizations. A "nonprofit organization" means any corporation which: (1) Is operated primarily for scientific, educational service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. Applicant organizations may choose to submit joint proposals with other organizations as long as one organization is designated as the prime applicant in the application and the others designated as subordinate. The prime applicant will retain responsibility for all work done by itself and other members of the applicant team. All co-applicants must meet the eligibility requirements specified in A and B.

In order to be eligible for consideration, the applicant must meet the following criteria:

A. The applicant organization must have documented experience as an organization operating nationwide training programs in organization and administrative management for private voluntary organizations involved with children and young people. Experience in training alone or in management consulting alone will not be considered to have met this criterion.

B. The key personnel must have had experience managing a nationwide training program in organization and administrative management.

VI. Application Requirements

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF-24), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information, outlined in section VII of the solicitation, in the Part IV Program Narrative of the application. The Program Narrative should be complete, but may not exceed 30 double-spaced pages in length.

In submitting applications in which organizations other than the prime applicant are named, the financial, administrative and functional relationships among the parties must be

set forth in the application. One applicant must be designated as the payee to receive and disburse project funds, must be responsible for the supervision and coordination of the activities of the other organizations, and must be responsible for project funds and services. Each organization of the applicant team must indicate acceptance of the conditions under which the application is made.

Contracts to be awarded by the recipient for the purchase of specific services shall constitute less than one-third of the total budget of the grant. All procurements shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Any proposed sole source or single bid contracts in excess of \$25,000 will require prior approval by OC.

A. Applicant Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the eligibility criteria established in Section V of this solicitation.

1. Organizational Experience

Applicants must concisely describe the organization's experience and that of the key personnel with respect to the eligibility criteria specified in Section V above.

2. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF-424), applicants must also demonstrate that their organization has established fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants must submit a copy of the Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

B. Realization of Goals and Objectives

Applicants shall concisely discuss how their prior experience and approach demonstrate a high probability of attaining the goals and objectives of this project.

C. Implementation Plan

The applicant must submit:

1. A description of the approach and strategy intended to be used to meet the goals and objectives of this project;

2. An annotated organizational chart depicting the roles and describing the responsibilities of key organizational and functional components;

3. A list of key personnel responsible for managing and implementing the

major components of the program. Applicants must present detailed position descriptions, qualifications, and reasons for selection of persons named for each key position. This documentation and individuals' resumes may be submitted as appendices to the application. Upon receipt of the award, the applicant must present documentation showing that each person named in a key position is a current employee of the applying organization or associated team, or has a documented commitment to perform the work as set forth in the application;

4. A concise discussion of the coordination and administration issues related to the program design and how their proposal would address these issues;

5. A time-task plan for the 18-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the products.

D. Program Budget

Applicants shall provide an 18-month budget with a detailed justification for all costs, relating them to a plan and including the basis for computation of these costs.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. Applications will be reviewed in terms of their responsiveness to the specifications in the solicitation and their organizational capability to achieve the goals and objectives of the project.

A. Organizational Capability (30 points)

The applicant must show the extent, quality and recency of organizational experience in providing training and technical assistance in organization and administrative management to private voluntary organizations involved with children and young people.

B. Plan (25 points)

The applicant must explain how the goals and objectives of the project can be achieved within the 18-month budget period.

C. Administrative Controls (5 points)

The applicant must explain how adequate administrative control will be effected.

D. Project Staff (30 points)

1. Staff identified to manage and implement the program, including the staff of other organizations named in the application as members of the team, must have documented, relevant experience in this field. (25 points)

2. Position descriptions, required qualifications and selection criteria relative to the specific functions set out in the project design must be appropriate to the program and clearly stated. (5 points)

E. Budget/Budget Narrative (10 points)

Applicants must include an 18-month budget with a detailed narrative justifying the costs. Applications will be rated based on the completeness, reasonableness and appropriateness of the budget in relation to the tasks and services to be provided.

F. Applications will be evaluated by a project proposal panel. Applicants must achieve at least 60% of the possible score on each of the above scoring criteria to be considered eligible for funding. Eligible applications which receive the highest total scores on the above criteria after consideration of the budget as described above, will be recommended for funding consideration by the Administrator, OJJDP, provided that any required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Upon request to OJJDP, the necessary forms for application will be provided along with Department of Justice certification information. Training materials developed during preceding phases of the cooperative agreement are available for review upon request in the offices of the Office of Juvenile Justice and Delinquency Prevention.

2. Applicants must submit the original signed application (Standard Form 424) and three copies to OJJDP, including the Certification that the organization has not been debarred (Form 4662/2).

Additionally, applicants must also provide, with the application, a Certification Regarding Drug-Free Workplace Requirements which meets the requirements of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, subtitle D), Form 4061/3, which will be supplied with the application information package. The applicant must also submit a completed and signed standard form LLL ("Disclosure of Lobbying Activities" Report) which will be supplied with an application information package.

3. All applications must be received by mail or hand delivered to the OJJDP by 5 p.m. EDT no later than 30 days after publication of this guideline in the **Federal Register**.

Those applications sent by mail should be addressed to: OJJDP, U.S. Department of Justice, 633 Indiana Avenue NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 744, 633 Indiana Avenue NW., Washington, DC between the hours of 8 a.m. and 5 p.m.

except Saturdays, Sundays or Federal holidays.

The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made concerning funding.

IX. Civil Rights Requirements

A. All recipients of OJJDP assistance, including contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973, as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination on the grounds of race, color, religion, national origin or sex against a recipient of funds after a due process hearing, the recipient will forward a copy of the finding to the Office of Civil Rights (OCR) of the Office of Justice Programs (OJP).

Dated: April 27, 1990.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-11218 Filed 5-14-90; 8:45 am]

BILLING CODE 4410-18-M

Small Business Innovation Research

Tuesday
May 15, 1990

Part IV

Department of Agriculture

Cooperative State Research Service

Small Business Innovation Research
Program for Fiscal Year 1991; Solicitation
of Applications; Notice

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****Small Business Innovation Research Program for Fiscal Year 1991; Solicitation of Applications**

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97-219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law Number 99-591, 100 Stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Program. This program will be administered by the Office of Grants and Program Systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing

private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging minority and disadvantaged participation in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1991 is approximately \$1,500,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of August 31, 1990. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water, and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403. These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award

administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended, (7 CFR part 3015) and Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants), (7 CFR part 3017) apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015 and 7 CFR part 3017 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for 1990 or who have recently requested placement on the list for 1991, will automatically receive a copy of the 1991 solicitation.

Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20250-2200, Telephone: (202) 475-5048.

Done at Washington, DC, this 9th day of May 1990.

John Patrick Jordan,
Administrator, Cooperative State Research Service.

[FR Doc. 90-11270 Filed 5-14-90; 8:45 am]

BILLING CODE 3410-22-M

Federal Register

Tuesday
May 15, 1990

Part V

Department of Education

Office of Postsecondary Education

Upward Bound Program; Notice of Proposed Priority

DEPARTMENT OF EDUCATION**Office of Postsecondary Education****Upward Bound Program****AGENCY:** Department of Education.**ACTION:** Notice of proposed priority.

SUMMARY: The Secretary of Education proposes to establish a priority for a fiscal year 1990 grant competition under the Upward Bound program for awards of one year's duration. Under this priority, approximately \$3 million would be available to fund proposals from applicants to establish 30 regional centers, each of which would offer an intensified math and science curriculum for a six-week period during the summer to students currently participating in an Upward Bound project. These projects are similar in some respects to centers funded by the National Science Foundation, and therefore will be evaluated with those centers to identify successful practices.

DATES: Comments must be received on or before June 14, 1990.

ADDRESSES: All comments concerning this proposed priority should be addressed to Jowava M. Leggett, Director, Division of Student Services, Office of Postsecondary Education, U.S. Department of Education (room 3060, ROB-3), 400 Maryland Avenue SW., Washington, DC 20202-5249.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett, (202) 732-4804.

SUPPLEMENTARY INFORMATION: National educators, school/college/university administrators, business leaders, and government officials have long acknowledged the need to increase the nation's supply of college graduates with degrees in math and science. Research studies such as *Science and Engineering Education for the 1980's and Beyond* (National Science Foundation and the U.S. Department of Education, 1980), *A Nation at Risk: The Imperative for Educational Reform* (The National Commission on Excellence in Education, April 1983), *Action for Excellence: A Comprehensive Plan to Improve Our Nations Schools* (Education Commission of the States, June 1983) focused national attention on this problem.

In September 1983, the National Science Board Commission on Pre-College Education in Mathematics, Science and Technology, National Science Foundation issued a report entitled *Educating Americans for the 21st Century: A Plan of Action for Improving Mathematics, Science and Technology Education for All American Elementary and Secondary Students So That Their Achievement Is the Best in*

the World by 1995, which offered recommendations intended "not only to increase opportunities for outstanding students in these fields, but also to enrich the educational experience of the entire range of American students—those planning careers as professional mathematics, scientists, engineers and teachers in these fields, those who will pursue technical careers, and those who will be the Nation's future political leaders, managers, laborers, parents, consumers and voters."

Recent research suggests that while inroads have been made in improving the quality of teaching through the development of teacher training programs in mathematics, science, and technology at the elementary, secondary, and postsecondary levels, much still remains to be done if the nation is to remain competitive in world technology in the next century and beyond. A 1988 study by the International Association for the Evaluation of Educational Achievement showed that 5th grade students in the United States held a middle position among the 16 top-ranked countries in science achievement and that American 9th graders ranked only 13th. Further, a December 1989 report issued by the Task Force on Women, Minorities and the Handicapped in Science and Technology (a panel of 48 government, business and education leaders chartered by Congress in 1986) estimates a shortfall of 560,000 scientists and engineers in the year 2010. The report estimates that the "nation's colleges must graduate twice as many white women in science and engineering, five times as many blacks and seven times as many Hispanics—beginning next year" in order to meet labor market demands for technical skills in the next century as projected by the Bureau of Labor Statistics. The White House Office of Science and Technology Policy has endorsed the panel's recommendation, which advocates specific roles for colleges and universities, the Federal government, local school districts, and private industry.

In April 1989, President Bush in sending his "Educational Excellence Act of 1989" to Congress for consideration and enactment, stated that "greater educational achievement promotes sustained economic growth, enhances the Nation's competitive position in world markets, increases productivity, and leads to higher incomes for everyone." One of the special initiatives under the Act is a National Science Scholars program which would provide scholarships to high school seniors who have excelled in the sciences and

mathematics. President Bush's commitment to attaining a better educated America was also articulated at the recent Education Summit when he called upon the Nation's Governors to work with the Administration to set National goals for education.

The National Science Foundation will spend \$357 million on science, mathematics and engineering education programs this year. The Department of Education will spend \$136 million under the Eisenhower Mathematics and Science Education program. These resources, coupled with even greater resources at the State and local level and activities in other agencies, reflect the importance which all levels of government, industry and the schools attach to improving this aspect of education.

The new initiative for the Upward Bound Program is clearly in concert with the national concern to address the devastating impact on the economy of this country's undereducated youth in general and the need to introduce math and science careers to educationally disadvantaged students at the secondary school level to increase the pool of college students pursuing degrees in these areas.

The National Science Foundation has responded to this need by funding Comprehensive Regional Mathematics and Science Centers for Women, Minorities and the Handicapped, as part of its Career Access Opportunities in Science and Mathematics program. These centers serve eligible children and young people in grades K-16.

Upward Bound provides academic instruction and other support services to students in grades 9-12 to encourage low-income and potential first-generation college students to complete high school and enter postsecondary education. The program structure is amenable to an inclusion of two major areas of precollegiate concentration that will motivate participant interest in and preparation for careers in math and science. The lack of college graduates among our population pursuing careers in math and science seriously jeopardizes the national economy as we approach the 21st century. Many other programs designed to focus on science and math do not target disadvantaged youth, nor do they routinely provide the additional support services these youth need. This program is designed to enhance the opportunity for achievement in math and science among these youth, and to give them additional opportunity to prepare to pursue careers in math and science if they choose to do so.

The Upward Bound math and science initiative will be implemented in the summer of 1991 so that the test of this approach in the Upward Bound setting can begin as early as possible.

The Secretary recognizes that there are some similarities between the Upward Bound initiative and the NSF centers. It is also likely that State or other funding sources are also supporting programs of this type. Therefore, the Secretary and the Director of the National Science Foundation have agreed to conduct jointly an evaluation of their programs and similar non-Federally funded programs. Their goal is to determine which approaches are successful and which are not in improving the achievement of the target populations. They plan to disseminate this information widely to States and local education agencies, managers of related Federal programs, and other interested parties.

In consideration of the foregoing and under the provision in the Department of Education General Administrative Regulations at 34 CFR 75.105(c)(3), the Secretary proposes to establish the following priority for a fiscal year 1990 Upward Bound grant competition.

Proposed Priority

Applicants may compete for one-year awards to develop regional centers to provide an intensive math and science curriculum for six weeks during the summer of 1991, without regard to 34 CFR 645.10(b), to current Upward Bound students who have completed the 9th grade. The Secretary has decided to establish a priority for these awards for applicants who submit proposals demonstrating the capability to network

with feeder projects (currently funded projects from which they recruit students) and to provide mechanisms for follow-up and academic support of participants when they return to their "home" projects; who have experience in providing specialized instructional and tutorial services to low-income students; who have demonstrated experience in administering bridge programs (summer residential programs for students that bridge the summer between graduation from secondary school and enrollment in a postsecondary institution); who propose to use faculty from their own and other institutions who are actively engaged in a program of research-related activities; who propose to involve each student served under this priority in those activities; and, who include in their application a commitment from an institution to make its faculty, laboratories, state-of-the-art equipment and dormitories available to these students. Each applicant must propose a full-time coordinator for this initiative who has at least a bachelor's degree in math or science.

In making awards under this priority, the Secretary will, to the extent possible, make grants in each geographic region of the United States to ensure that the maximum number of students currently enrolled in an Upward Bound project have access to these special initiative projects.

Projects must establish a cooperative relationship with other Federal and non-Federal science and mathematics teaching and learning activities, if any, in their areas, including (1) Activities funded under the Eisenhower Mathematics and Science Education programs and by the National Science

Foundation, (2) the mathematics and science teachers and curriculum planners in their areas, and (3) if there are Federal laboratories or science facilities in the area, with those facilities participating in the Secretary of Energy's initiative to relate those facilities to elementary and secondary school science teaching. All grantees are required to cooperate fully with the ED/NSF evaluation.

Invitation to comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

The Secretary specifically invites comment on the following issues:

(1) Whether students other than those currently participating in an Upward Bound project should be eligible to participate under this math and science initiative; and

(2) If so, what standards should the final priority contain to inform grantees adequately concerning which students may participate. All comments submitted in response to this priority will be available for public inspection, during and after the comment period, in room 3060, Regional Office Building #3 (7th and D Streets, SW.), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Fridays of each week except Federal holidays.

Authority: 20 U.S.C. 1070d, 1070d-1a. (Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Dated: May 10, 1990.

Lauro F. Cavazos,
Secretary of Education.

[FR Doc. 90-11367 Filed 5-14-90; 8:45 am]

BILLING CODE 4000-01-M

Resistant to Terror

Tuesday
May 15, 1990

Part VI

The President

Proclamation 6134—National Day in
Support of Freedom and Human Rights

Thursday
May 18, 1980

Part VI

The President

Proclamation 5134--National Day in
Support of Freedom and Human Rights

President Carter

Presidential Documents

Title 3—

Proclamation 6134 of May 12, 1990

The President

National Day in Support of Freedom and Human Rights

By the President of the United States of America

A Proclamation

From mid-April to early June of last year, millions of citizens of the People's Republic of China participated in massive demonstrations in scores of Chinese cities in a remarkable display of peaceful political activity. The goals they espoused—greater freedoms, more respect for human rights, more meaningful opportunities for participation in political processes—are goals cherished by all Americans.

Tragically, on the night of June 3–4, lethal force was used to crush the demonstrations. This action, far beyond the legitimate requirements of law and order, resulted in the deaths of hundreds of unarmed citizens. In the months that followed, many thousands more were detained and otherwise punished for their peaceful expression of political views. Harsh penalties were imposed for activities connected with the demonstrations.

This suppression of dissent in Beijing and other major cities in June echoed the suppression of peaceful demonstrations in Tibet, where a series of demonstrations between October 1987 and March 1989 were put down with increasing severity by Chinese security forces, resulting in the deaths of scores of persons. Participants in subsequent, smaller demonstrations were also imprisoned or otherwise punished for nonviolent political dissent, and martial law was imposed on Tibet's capital from March 1989 until May 1, 1990.

Steps have been taken in recent months that have resulted in some improvement. China lifted martial law in Beijing and Lhasa, announced the release of hundreds of prisoners who had been held for political activities, and stated its willingness to receive officially sponsored U.S. scholars and Peace Corps volunteers. The United States hopes that these steps will be followed by others that will demonstrate China's return to the path of reform.

The Congress, by Senate Joint Resolution 275, has authorized and requested the President to issue this proclamation in support of freedom and human rights.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim May 13, 1990, as a National Day in Support of Freedom and Human Rights. I call upon the people of the United States to observe this day in the spirit of commemorating those who died; drawing inspiration from the courage of those who held fast to their ideals in the face of violent suppression; and urging the Chinese Government to respond positively to the fundamental aspirations for freedom expressed in last year's demonstrations. These are the same fundamental aspirations so profoundly expressed by people around the world during the momentous events we are still witnessing—events that are daily advancing the cause of freedom and human rights.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth 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.

George H. W. Bush

[FR Doc. 90-11489

Filed 5-14-90; 11:26 am]

Billing code 3195-01-M

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Tuesday, May 15, 1990

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H.J. Res. 546/Pub. L. 101-287

Designating May 13, 1990, as "Infant Mortality Awareness Day". (May 10, 1990; 104 Stat. 177; 1 page) Price: \$1.00

S. 1485/Pub. L. 101-288

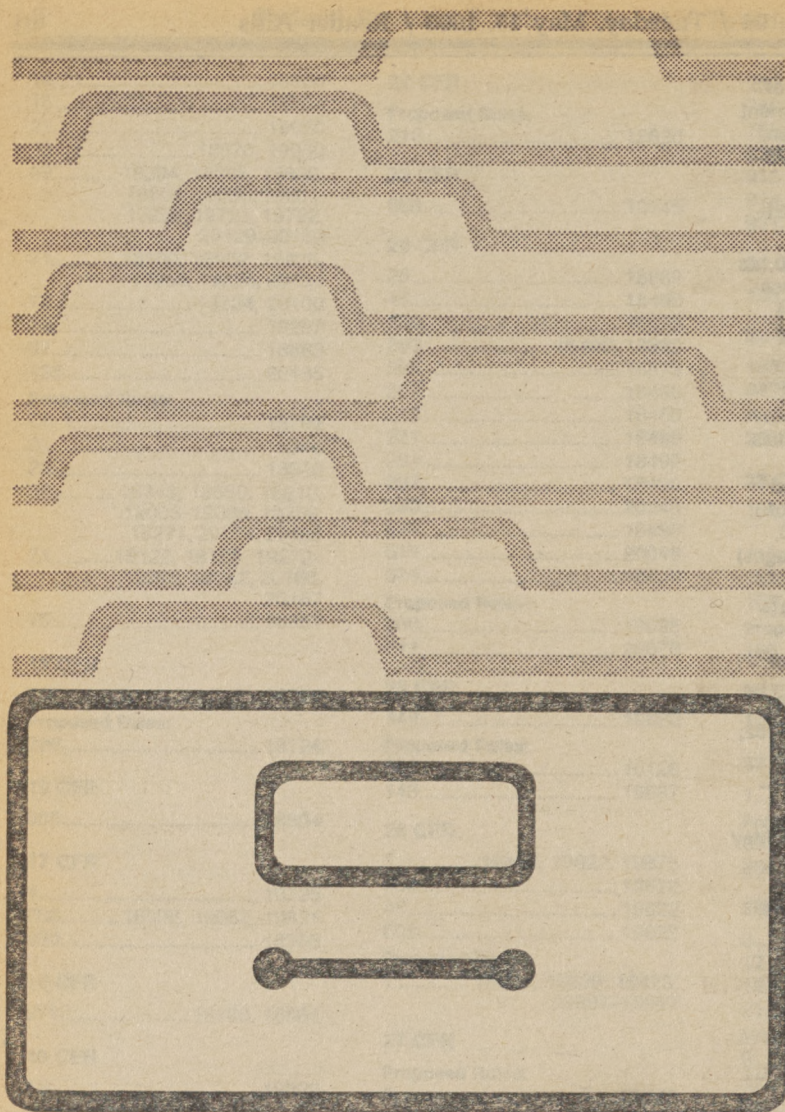
To grant the consent of Congress to the Quad Cities Interstate Metropolitan Authority Compact entered into between the States of Illinois and Iowa. (May 10, 1990; 104 Stat. 178; 4 pages) Price: \$1.00

S.J. Res. 224/Pub. L. 101-289

To designate the month of May 1990, as "National Trauma Awareness Month". (May 10, 1990; 104 Stat. 182; 1 page) Price: \$1.00

S.J. Res. 241/Pub. L. 101-290

To designate the week of May 6, 1990 through May 13, 1990, as "Jewish Heritage Week". (May 10, 1990; 104 Stat. 183; 1 page) Price: \$1.00



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