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Rules and Regulations

Federal Register

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Monday, July 30, 1990

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 728]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from July 29 through August 4, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action was recommended by the Lemon Administrative Committee (Committee), which is responsible for local administration of the lemon marketing order.

DATES: Regulation 728 (7 CFR part 910) is effective for the period from July 29 through August 4, 1990. Comments are due August 30, 1990.

ADDRESSES: Interested persons are invited to submit written comments to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division,

Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The production area is divided into three districts which span California and Arizona. The Committee estimates District 1, central California, 1990-91 production at 6,200 cars compared to the

4,153 cars produced in 1989-90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 23,941 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 8,400 cars compared to the 9,435 cars produced last year. The Committee's estimate of 1990-91 production is 39,300 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 37,500 cars during the 1989-90 season. The National Agricultural Statistics Service will publish on October 11, 1990, an estimate of the 1990-91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. The Committee estimates that about 44 percent of the 1990-91 crop of 39,300 cars will be utilized in fresh domestic channels (17,340 cars), compared with the 1989-90 total of 16,500 cars, about 44 percent of the total production of 37,500 cars in 1989-90. Fresh exports are projected at 22 percent of the total 1990-91 crop utilization compared with 22 percent in 1989-90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989-90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and

recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990-91 season to the Department on June 19. The marketing policy discusses, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on July 24, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended that 360,251 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990-91 marketing policy. This recommended amount is 40,251 cartons above the estimated projections in the shipping schedule.

During the week ending on July 21, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 368,000 cartons compared with 381,000 cartons shipped during the week ending on July 22, 1989. Export shipments totaled 136,000 cartons compared with 177,000 cartons shipped during the week ending on July 22, 1989. Processing and other uses accounted for 248,000 cartons compared with 157,000 cartons shipped during the week ending on July 22, 1989.

Fresh domestic shipments to date for the 1989-90 season total 16,289,000 cartons compared with 16,131,000 cartons shipped by this time during the 1988-89 season. Export shipments total 7,532,000 cartons compared with

8,054,000 cartons shipped by this time during 1988-89. Processing and other use shipments total 12,528,000 cartons compared with 15,573,000 cartons shipped by this time during 1988-89.

For the week ending on July 21, 1990, regulated shipments of lemons to the fresh domestic market were 368,000 cartons on an adjusted allotment of 418,000 cartons which resulted in net undershipments of 50,000 cartons. Regulated shipments for the current week (July 22 through July 28, 1990) are estimated at 375,000 cartons on an adjusted allotment of 419,000 cartons. Thus, undershipments of 44,000 cartons could be carried over into the week ending on August 4, 1990.

The average f.o.b. shipping point price for the week ending on July 21, 1990, was \$14.67 per carton based on a reported sales volume of 356,000 cartons compared with last week's average of \$14.61 per carton on a reported sales volume of 386,000 cartons. The 1989-90 season average f.o.b. shipping point price to date is \$13.56 per carton. The average f.o.b. shipping point price for the week ending on July 22, 1989, was \$15.32 per carton; the season average f.o.b. shipping point price at this time during 1988-89 was \$12.32 per carton.

The Department's Market News Service reported that, as of July 24, demand for lemons ranging in size from 75 to 115 is good and demand is fairly good for all other sizes. The market is "about steady" for all grades and sizes of lemons. At the meeting, demand was characterized as fairly good on all sizes of first grade lemons. One Committee member commented on the relatively high level of small-sized lemons in storage and the need to move that fruit in an orderly fashion. Another member commented on some cases of "sour rot" affecting lemons in storage which results in problems with fruit quality on arrival to terminal markets. Committee members discussed different levels of volume regulation. The Committee unanimously recommended volume regulation for the period from July 29 through August 4, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990-91 season average fresh on-tree price is estimated at \$9.76 per carton, 119 percent of the projected season average fresh on-tree parity equivalent price of \$8.20 per carton. The California-Arizona 1989-90 season average fresh on-tree price is estimated at \$8.64, 115 percent of the projected season average fresh on-tree parity equivalent price of \$7.50 per carton.

Limiting the quantity of lemons that may be shipped during the period from July 29 through August 4, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register*. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until July 24, 1990, and this action needs to be effective for the regulatory week which begins on July 29, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

The Department intends to issue a proposed rule requesting comments on the need for and level of volume regulations during the 1990-91 season, the Committee's proposed shipping schedule, and the possible regulatory and informational impact of possible volume regulations on small businesses. The Department would analyze comments received in response to the proposed rule and then, if warranted, issue a final rule for the remainder of the 1990-91 season. This notice and comment process is expected to be completed by November. However, the 1990-91 marketing season begins on August 1. Therefore, in order to provide

an opportunity for public input on any regulations which may be issued prior to the completion of the notice and comment process, the Department requests comments on the need for and level of regulation during the 1990-91 season and the possible regulatory and informational impact of possible regulations on small businesses. Thirty days has been provided for the receipt of comments.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 910.728 is added to read as follows:

§ 910.728 Lemon Regulation 728.

The quantity of lemons grown in California and Arizona which may be handled during the period from July 29 through August 4, 1990, is established at 360,251 cartons.

Dated: July 25, 1990.

Charles R. Brader,
Director, Fruit and Vegetable Division.

[FR Doc. 90-17766 Filed 7-27-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

[FV-90-186FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Inedible Disposition Obligation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends from July 31, 1990 to August 31, 1990, the date by which handlers of California almonds must satisfy their 1989-90 crop year inedible disposition obligation. This action is needed due to changes in ownership of handler processing facilities during the 1989-90 crop year, which have reduced handler capabilities

to process the 1989 crop. This action is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order, and other available information.

EFFECTIVE DATE: July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3923.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981, both as amended (7 CFR part 981), hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 95 handlers of almonds who are subject to regulation under the almond marketing order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action gives handlers of California almonds an additional month to satisfy their 1989-90 crop year inedible disposition obligation. This

action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

This final rule revises, for 1990 only, § 981.442 of subpart—Administrative Rules and Regulations and is based on the unanimous recommendation of the Board and other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board-accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service, less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to administer these provisions.

Paragraph 981.442(a)(5) of the rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. This action extends the July 31 date to August 31 for handlers' disposition obligations incurred during the 1989-90 crop year only. Thus, handlers have until August 31, 1990, to satisfy their 1989-90 crop year inedible disposition obligation.

This action is needed due to changes in ownership of handler processing facilities during the 1989-90 crop year, which have reduced handler capabilities to process the 1989 crop. Handlers obtain almond kernels with which to meet their inedible disposition obligation by removing inedible kernels during processing.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Board's recommendation and other available information, it is found that extending the date for satisfying the inedible disposition obligation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It has been determined that conditions warrant publication of this final rule without prior opportunity for public comment, because this action relaxes restrictions on handlers by allowing

them additional time to satisfy their inedible disposition obligations. This action must be taken promptly because it extends a July 31, 1990, deadline, and, therefore, must be finalized by that date. Therefore, pursuant to the administrative procedure provision in 5 U.S.C. 553, it is found with good cause that notice of public rulemaking and other public procedure with respect to this final action are impracticable, unnecessary, and contrary to the public interest. For these reasons, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Note: (This revision will not appear in the annual Code of Federal Regulations.)

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. The last sentence in paragraph (a)(5) of § 981.442 is revised to read as follows:

§ 981.442 Quality Control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred: Provided, That for 1989-90 crop year almonds, handlers have until August 31, 1990, to satisfy their disposition obligations.

* * *

Dated: July 25, 1990.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 90-17680 Filed 7-27-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 998

[Docket No. FV-90-151 FR]

Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts

Changes in Incoming and Outgoing Quality Regulations and Terms and Conditions of Indemnification for 1990 Crop Peanuts

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the incoming and outgoing quality regulations and the current terms and conditions of indemnification for 1990 crop peanuts regulated under Marketing Agreement No. 146. The outgoing regulation is changed to exempt from its requirements peanuts intended for seed use which are denatured to render them unfit for human consumption. Another change in the incoming and outgoing regulations allows out-of-grade lots of peanuts to be moved for further processing (cleanup) without an accompanying aflatoxin certificate. Two changes in the terms and conditions of indemnification are made to expand indemnification coverage to further protect handlers from losses due to aflatoxin. Another change in the terms and conditions is made to reflect current practices relating to indemnification of inshell peanuts. These changes are designed to reduce handler costs, maximize utilization of handler acquisitions, and eliminate requirements on handlers not needed to accomplish program goals.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts, hereinafter referred to as the Agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are about 50 handlers of peanuts subject to regulation under the agreement, and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States covered under the agreement: (1) Virginia-Carolina; (2) Southeast; and (3) Southwest. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1989 totalled 4.03 billion pounds, a 1 percent increase from 1988, and 10 percent more than in 1987. The 1989 crop value is \$1.12 billion, and the 1988 crop of approximately the same value.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 and participating shellers handle about 95 percent of the crop. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to non-edible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the Department or in

laboratories approved by the Peanut Administrative Committee (Committee). The Committee works with the Department in administering the marketing agreement program. The inspection and chemical analysis programs are administered by the Department. Having complied with these requirements, provision is made for indemnification of sheller losses incurred when peanuts are deemed unsuitable for human consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulation specifies the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulation requires shellers to mill peanuts to meet certain quality specifications and have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

On March 21-22, 1990, the Committee unanimously recommended the following changes in the outgoing quality regulation and terms and conditions of indemnification for 1990 crop peanuts to reduce the regulatory requirements on handlers and expand indemnification coverage to further protect handlers from losses due to aflatoxin.

The proposed rule on the recommended changes was published in the *Federal Register* on June 14, 1990 (55 FR 24097). The comment period ended on June 25, 1990. Eight comments were received on the proposed rule, all of which supported the action as proposed.

Paragraph (i) of § 998.200 *Outgoing quality regulation*, is changed to exempt seed peanuts from such regulation if the peanuts are chemically treated to prevent their use for edible consumption. This change recognizes that the objective of the agreement is to regulate the quality of peanuts marketed for edible purposes, not seed use. Peanuts used for seed are treated with a fungicide, rendering them unfit for human consumption or for use as animal feed. For the same reason, paragraph (g) of § 998.200 is changed to allow "fall

through" (sound split and broken kernels and whole kernels which pass through specified screens) which has been chemically treated to be used for seed. The outgoing quality regulation requires "fall through" to be disposed of in non-edible outlets, but does not provide for its use as seed. However, "fall through" generally contains peanuts that are suitable for use as seed. Such peanuts may be separated from "fall through" and used for this purpose. This change provides for maximum utilization of handler acquisitions and increased returns, as returns for seed peanuts are higher than returns yielded in other outlets (e.g., crushing for oil) in which "fall through" may be disposed. This is effectuated by inserting appropriate language in paragraph (g)(3)(i).

Another change recommended by the Committee amends paragraphs (h)(1) and (h)(4) of § 998.200 to allow out-of-grade lots of shelled peanuts to be moved to a blancher, remiller or another handler for further processing (cleanup) without an accompanying aflatoxin certificate. This change also amends paragraph (h)(2) to require that lots of peanuts moved to a blancher for further processing be accompanied by a valid grade inspection certificate. Previously, paragraphs (h)(1) and (h)(4) required that lots of peanuts moved for further processing be accompanied by an aflatoxin certificate, while paragraph (h)(2) was silent regarding certificate requirements. In the past, it was believed that an aflatoxin analysis in this situation was necessary to control aflatoxin. However, actual practices indicate that this analysis is unnecessary because the cleaning process normally removes molded or contaminated kernels. Further, the regulation requires aflatoxin testing of such lots following the cleanup process to determine whether they are suitable to be disposed of in edible outlets. Thus, there is no reason to have an aflatoxin certificate prior to moving out-of-grade lots for further processing. This will eliminate unnecessary costs, lost time and an additional requirement associated with moving out-of-grade lots for cleanup purposes. This change is accomplished by removing the wording "an aflatoxin assay certificate" from paragraphs (h)(1) and (h)(4) and inserting the sentence "Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate." after the first sentence in paragraph (h)(2) of § 998.200.

One change is made in § 998.100 *Incoming quality regulation*, applicable to 1990 crop peanuts to bring it into conformity with the change in paragraph

(h)(1) of § 998.200 relating to the movement of out-of-grade lots for further processing. Paragraph (i) § 998.100 is amended by removing the words "an aflatoxin certificate" from the second sentence.

These changes in the incoming and outgoing quality regulations provide for maximum utilization of the 1990 and subsequent peanut crops and simplify handler operations under the agreement. The changes will not adversely impact the quality of peanuts ultimately disposed of for edible use.

The Committee recommended two changes in § 998.300 *Terms and conditions of indemnification* that broaden indemnification coverage to further protect handlers from losses due to aflatoxin. The first change amends paragraph (t) of § 998.300 to extend indemnification protection to lots of peanuts which initially fail to meet the outgoing requirements applicable to edible grades which are subsequently successfully blanched or remilled to meet indemnifiable grade requirements, prior to shipment. Under the previous terms and conditions, such peanuts were not eligible for indemnification. The Committee believes that all lots of out-of-grade peanuts brought within the requirements for indemnifiable grades, whether blanched, remilled by a Committee approved remiller or remilled by a handler, should be treated the same with respect to indemnification coverage. This change is accomplished by removing limitations (2) and (4) from paragraph (t) which lists categories of peanuts which are not eligible for indemnification.

The second change in the terms and conditions of indemnification amends paragraph (j) § 998.300 to provide for indemnification payments on manufactured products made from any edible quality grade peanuts. This change extends protection to products made from lower grade edible quality peanuts which are not indemnifiable, in raw form or if used in products, under the previous regulations. The requirements for such peanuts, termed "other edible quality", are included in paragraph (a) of § 998.200. These grade categories of peanuts are of a lesser quality than the indemnifiable grades, but are deemed fit for human consumption. The Committee now believes that it is inconsistent not to provide indemnification benefits on "other edible quality" grade categories when such categories are marketed for human consumption. Accordingly, the Committee recommended that indemnification coverage be provided

for products made from "other edible quality" grades of peanuts.

The Committee also recommended that the time period for filing indemnification claims on products be extended to November 1 of the second year following the year in which the peanuts used in such products were produced. Thus, with the publication of this action, claims on products manufactured from indemnifiable grades of 1989 crop peanuts can be filed until November 1, 1991, and claims on products manufactured from all edible quality grades of 1990 crop peanuts can be filed until November 1, 1992. Often, previous crop year peanuts marketed early in the following crop year were not used in products soon enough to permit a claim to be filed before the normal deadline for filing claims (November 1, following the end of the current crop year). The extension of the deadline for filing claims was recommended to provide coverage of these products. In addition to improving the current procedure for indemnifying products, the extension will facilitate the movement of previous crop year peanuts by providing insurance against aflatoxin contamination of products made from such peanuts.

Also, an addition to the terms and conditions of indemnification is made relating to indemnification of inshell peanuts to reflect current practice. Indemnification on inshell peanuts rejected after shipment, due to aflatoxin, will be limited to transportation expenses. Handlers will be paid for transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee. Accordingly, a footnote (1) is added to paragraph (s)(1) of § 998.300 specifying the extent of indemnification on inshell peanuts. The footnote (1) appearing at paragraph (s)(1)(iii) is changed to (2).

The information collection requirements that are contained in the sections of these regulations which are amended have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Number 0581-0067.

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the committee's recommendation, the comments

received, and other information, it is found that the changes in incoming and outgoing quality regulations and terms and conditions of indemnification, as set forth in this final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes outgoing quality requirements on handlers and brings the terms and conditions of indemnification into conformity with industry practice; (2) the harvest and shipment of 1990 crop peanuts is expected to start at the end of July and these regulation and procedure changes implemented by this action should cover as much of the 1990 crop as possible; and (3) handlers should be given as much notice of these changes as possible so that they can plan accordingly.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Note: These changes will appear in the annual Code of Federal Regulations.

2. Section 998.100 is amended by revising the section heading and revising the second sentence of paragraph (i) to read as follows:

§ 998.100 Incoming quality regulation—1990 crop peanuts.

(i) * * * Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors and must be positive lot identified. * * *

3. Section 998.200 is amended by revising the section heading, adding a new sentence after the second sentence of paragraph (g)(3)(i), revising the second sentence of paragraph (h)(1), adding a new sentence after the first sentence of paragraph (h)(2), revising the second sentence of paragraph (h)(4), revising the heading of paragraph (i), designating the current text of paragraph

(i) as (i)(1) and adding a new paragraph (i)(2) to read as follows:

§ 998.200 Outgoing quality regulation—1990 crop peanuts.

(g) * * *
(3)(i) * * * Also, fall through which has been chemically treated to prevent use for edible consumption may be used for seed purposes.

(h)(1) * * * Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, and must be positive lot identified. * * *

(h)(2) * * * Lots of peanuts which are moved under these provisions must be accompanied by a valid grade inspection certificate.

(h)(4) * * * Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and must be positive lot identified. * * *

(i) *Seed peanuts and residuals from seed peanuts.*

(2) Peanuts which are used for seed purposes and which have been treated with chemicals causing them to be unfit for human consumption and animal feed, shall be exempt from the provisions of the Outgoing Quality Regulation.

4. Section 998.300 is amended by revising the section heading, revising paragraph (i), redesignating footnote (1) in paragraph (s)(1)(iii) as footnote (2) and adding a new footnote (1) in paragraph (s)(1) and revising paragraph (t) to read as follows:

§ 998.300 Terms and conditions of indemnification—1990 crop peanuts.

(i) Claims for indemnification may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all of the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay such claims as it determines to be valid, to the extent of the equivalent indemnification value applicable to the peanuts used in the product so withheld. On products manufactured from indemnifiable grades of 1989 crop peanuts, such claims may be filed with the Committee no later than November 1, 1991. On products manufactured from edible quality grades of 1990 crop peanuts, such claims may

be filed with the Committee no later than November 1, 1992.

(s) * * *

- (1) *Cleaned inshell peanuts* * * * *
 (iii) *Valencia-Roasting Stock* ²

(t) However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation; or (2) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects.

Dated: July 25, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-17681 Filed 7-27-90; 8:45 am]

BILLING CODE 3416-02-M

FARM CREDIT ADMINISTRATION

12 CFR Parts 613, 614, 615, 616, 618, and 619

RIN 3052-AA94

Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Coordination; General Provisions; Definitions; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under parts 613, 614, 615, 616, 618, and 619, on June 19, 1990 (55 FR 24861). The final regulations amended parts 613, 614, 615, 616, 618, and 619 to set forth lending authorities and lending requirements for Farm Credit banks and associations, reconciling, where necessary the authorities of institutions

¹ Eligible lots of cleaned inshell peanuts which are found, after shipment, to contain excessive aflatoxin, may be rejected to the handler. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border reentry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be the extent of the indemnification payment.

² Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

created under the restructuring provisions of the Agricultural Credit Act of 1987. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the Federal Register during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is July 30, 1990.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 833-4496.

or

Dorothy J. Acosta, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: July 24, 1990.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 90-17666 Filed 7-27-90; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-62-AD; Amdt. 39-6660]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which currently requires a one-time inspection of certain main landing gear (MLG) uplock control bellcrank support bearings, and replacement, if necessary. This amendment requires a one-time inspection to identify bearing part number, and replacement with new sealed bearings, if necessary. This amendment is prompted by reports that bearings with Part Number 8116-16 are subject to corrosion. This condition, if not corrected, could result in the inability of the MLG to extend in the free-fall mode following a failure of the normal extend mode.

EFFECTIVE DATE: August 31, 1990.

ADDRESSES: The applicable service information may be obtained from

Airbus Industrie 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, Transport Airplane Directorate, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-23-01, Amendment 39-6366 (54 FR 43045, October 20, 1989), applicable to certain Airbus Industrie Model A300 series airplanes, to require a one-time inspection to identify bearing part number, and replacement with new sealed bearings, if necessary, was published in the Federal Register on April 30, 1990, (55 FR 17987).

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

The commenter supported the rule.

Paragraph C. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

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 with the change noted above. The FAA has determined that this change 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 11.5 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost for required parts is \$1,330. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$118,140.

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 superseding Amendment 39-6366 (54 FR 43045, October 20, 1989), AD 89-23-01, with the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 series airplanes, serial numbers up to and including 253, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent malfunction of the main landing gear in the free fall mode, accomplish the following:

A. Within 100 landings after November 27, 1989 (the effective date of AD 89-23-01), inspect both main landing gears (MLG) for defective uplock control bellcrank support bearings, Part Number (P/N) 8116-16, in accordance with All Operators Telex (AOT) 32/88/02, dated December 14, 1988. If a defective bearing is found, replace it with a serviceable bearing prior to further flight.

B. Replace both MLG uplock control bellcrank support bearings, P/N 8116-16, with new sealed bearings, P/N 8106-16, in accordance with Airbus Industrie Service Bulletin A300-32-395, dated November 30, 1989, as follows:

1. Within 30 months after the effective date of this AD, if bearings, P/N 8116-16, were replaced at the time of accomplishing paragraph A., above.

2. Within 15 months after the effective date of this AD, if bearings, P/N 8116-16 were not replaced at the time of accomplishing paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. 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 supersedes Amendment 39-6366, AD 89-23-01.

This amendment becomes effective August 31, 1990.

Issued in Seattle, Washington, on July 17, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-17635 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-56-AD; Amdt. 39-6676]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A series airplanes, which currently requires repetitive inspection of the vertical stabilizer top closure rib to detect cracks, and repair, if necessary. This amendment revises the inspection procedures for detecting fatigue cracks in the vertical stabilizer top closure rib; and adds Model SAAB 340B series

airplanes to the applicability of the rule. This amendment is prompted by additional reports of fatigue cracks in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

EFFECTIVE DATE: August 30, 1990.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. 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. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68996, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-13-10, Amendment 39-5963 (53 FR 23753, June 24, 1988), applicable to certain SAAB SF-340A and SAAB 340B series airplanes, which requires repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary, was published in the Federal Register on April 30, 1990 (55 FR 17994).

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

The commenter supported the rule.

Paragraph D. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

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 with the change described above. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 95 airplanes of U.S. registry will be affected by this AD, that it will take approximately .5 manhour 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 \$1,900.

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 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 superseding Amendment 39-5963 (53 FR 23754, June 24, 1988), AD 88-13-10, with the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, Serial Numbers 031 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 194; certificated in any category.

Compliance is required as indicated, unless previously accomplished.

To prevent inhibited airplane rudder control due to cracking in the vertical stabilizer top closure rib, accomplish the following:

A. Prior to the accumulation of 500 hours time-in-service since new or within 100 hours time-in-service after the effective date of this amendment, whichever occurs later, inspect the vertical stabilizer top closure rib for evidence of cracking, in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990.

B. If no evidence of cracking is found, reinspect the vertical stabilizer top closure rib for cracking at intervals not to exceed 500 flight hours time-in-service.

C. If cracking is found, prior to further flight, stop drill the ends of the cracks, blend, clean, and apply aluminum tape, as specified in SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990. Reinspect for additional cracking and the condition of the aluminum tape at intervals not to exceed 100 hours time-in-service.

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, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. 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 supersedes Amendment 39-5963, AD 88-13-10.

This amendment becomes effective August 30, 1990.

Issued in Seattle, Washington, on July 16, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-17634 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-51-AD; Amdt. 39-6681]

Airworthiness Directives; Aerospatiale Model SN 601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model SN 601 Corvette series airplanes, which requires repetitive high frequency eddy

current inspections to detect cracks in the left-hand inner beam stiffeners between fuselage Frame 16 and Frame 20, and repair, if necessary, and eventual replacement of all left-hand inner beam stiffeners between fuselage Frame 16 and Frame 20. This amendment is prompted by reports of fatigue cracks found in the left-hand inner beam stiffeners between Frame 16 and Frame 20. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

EFFECTIVE DATE: August 31, 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 Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 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 Model SN 601 Corvette series airplanes, which would require repetitive high frequency eddy current inspections to detect cracks in the left-hand inner beam stiffeners between fuselage Frame 16 and Frame 20, and repair, if necessary, and eventual replacement of all left-hand inner beam stiffeners between fuselage Frame 16 and Frame 20, was published in the *Federal Register* on April 30, 1990 (55 FR 17995).

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

Paragraph E. of the final rule has been revised to specify the current procedure for submitting requests for approval of an alternate means of compliance.

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. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that one airplane of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The estimated cost for the required modification kit is \$1,725. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,085 for the initial inspection cycle and modification.

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: Applies to all Model Corvette SN 601 series airplanes that have not incorporated Modification No. 1397, certified in any category. Compliance is required as indicated, unless previously accomplished.

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

A. Prior to the accumulation of 9,800 landings or within 100 landings after the effective date of this AD, whichever occurs later, perform a high frequency eddy current inspection of the left-hand inner beam between Frame 16 and Frame 20, in accordance with Corvette SN 601 Service Bulletin, 53-18, Revision 1, dated January 22, 1990.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 3,900 landings.

C. If cracks are found, modify prior to further flight, in accordance with Corvette SN 601 Service Bulletin 53-11, Revision 2, dated January 15, 1990. Incorporation of this modification (No. 1397) constitutes terminating action for the repetitive inspections required by paragraph B., above.

D. Within one year after the effective date of this AD, replace all left-hand inner beam stiffeners between Frame 16 and Frame 20, in accordance with Corvette SN 601 Service Bulletin 53-11, Revision 2, dated January 15, 1990. Incorporation of this modification (No. 1397) constitutes terminating action for the repetitive inspections required by paragraph B., 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, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence 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 August 31, 1990.

Issued in Seattle, Washington, on July 17, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-17636 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas, Pacific Ocean, San Clemente Island, CA

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

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish two naval danger zones and promulgating regulations to establish another danger zone in the waters offshore of San Clemente Island, California. The danger zones are necessary to provide a sufficient margin of safety for civilian craft operating around the southern portion of San Clemente Island.

EFFECTIVE DATE: August 29, 1990.

ADDRESSES: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Harlachner at (213) 894-5606 or Mr. Ralph T. Eppard at (202) 272-1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the danger zone regulations in 33 CFR 334.50 and 334.70; adding a new danger zone offshore of San Clemente Island and also consolidating all three of the danger zones in 33 CFR 334.50. On March 20, 1990, the regulations were published as proposed rules in the Federal Register (55 FR 10253-10254), with the comment period expiring on April 19, 1990. We received no comments in response to the Notice of Proposed Rulemaking and accordingly, the rules are established as proposed.

Economic Assessment and Certification

This proposed rule is being issued with respect to a military function of the Department of Defense and the provisions of E.O. 12291 do not apply. I hereby certify that this proposed rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

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

Authority: 40 Stat. 266; 33 U.S.C. 1 and 40 Stat. 892; 33 U.S.C. 3.

2. Section 334.950 is revised to read as follows:

§ 334.950 Pacific Ocean at San Clemente Island, California; Navy shore bombardment areas.

(a) *The danger zones.* (1) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 072.5 degrees true, 5.375 nautical miles; thence 313 degrees true to Pyramid Head Light.

(2) The waters of the Pacific Ocean within an area beginning at China Point Light; extending in a direction of 181 degrees true, 2.0 nautical miles; thence 303 degrees true, 5.35 nautical miles; thence 040.4 degrees true to the beach.

(3) The waters of the Pacific Ocean within an area beginning at Pyramid Head Light; extending in a direction of 133 degrees true, 2.0 nautical miles; thence 024 degrees true, 2.14 nautical miles, thence 313 degrees true, 7.6 nautical miles; thence 220 degrees true to the beach.

(b) *The regulations.* (1) All vessels shall promptly vacate the areas when ordered to do so by the Navy or the Coast Guard. Vessels shall not enter the areas during periods scheduled for firing. These areas are used for various surface and air gunnery and aerial bombing exercises by the United States Navy, Coast Guard and Marine Corps. Hazardous conditions exist during shore bombardment by naval ships in the area seaward of that described in paragraphs (a)(1) and (a)(2) of this section between the firing vessel and the shore. The area described in paragraph (a)(3) of this section is hazardous due to the possibility of rounds landing in the waters east of San Clemente Island.

(2) Mariners are warned that unexploded ordinance exists within the shore bombardment area on San Clemente Island and in the surrounding waters. Mariners should exercise extreme caution when operating in the area.

(3) Information about scheduled exercises will be published in the Local Notice to Mariners and also may be obtained by calling the shore bombardment area scheduler at (619) 437-2231. Vessels in the vicinity of San Clemente Island may obtain information on the status of the range by contacting the Navy Observation Post by marine radio on channel 16. However, the Navy

Observation Post is normally manned only during firing exercises. In addition, since the Navy Observation Post may not be able to receive radio transmissions or answer a vessel calling from the area described in paragraph (A)(3) of this section due to interference from the land mass, it is recommended that callers position their craft for line-of-sight transmission with the Navy Observation Posts near Pyramid Cove prior to assuming that the range is not in use.

(4) Except in an emergency, no vessel shall anchor in these areas without first obtaining permission from the Commander, Naval Base, San Diego or from the senior officer present in the area who may grant permission to anchor not exceeding the period of time that he, himself, is authorized to remain there. The senior officer present shall advise the Commander, Naval Base, San Diego when and to whom a berth is assigned.

(5) The regulations in this section shall be enforced by the Commander, Naval Base, San Diego, and such agencies as he/she shall designate.

§ 334.970 [Removed]

3. Section 334.970 is removed.

Dated: June 28, 1990.

Approved:

Patrick J. Kelly,

Major General, USA, Director of Civil Works.

[FR Doc. 90-17651 Filed 7-27-90; 8:45 am]

BILLING CODE 3710-92-M

POSTAL SERVICE**39 CFR Part 946****Disposition of Property Acquired by Postal Inspection Service**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule revises an existing requirement that abandoned cash and the proceeds of the sale of abandoned property be deposited in the Postal Service Fund established by 39 U.S.C. 2003. It would allow the Chief Postal Inspector to share any abandoned property, including cash and the proceeds of the sale of abandoned property with federal, state or local law enforcement agencies.

EFFECTIVE DATE: August 29, 1990.

FOR FURTHER INFORMATION CONTACT:

Fred I. Rosenberg, (202) 268-5477.

SUPPLEMENTARY INFORMATION: On March 4, 1988, the Postal Service published in the *Federal Register* (53 FR 6986) a final rule regarding the

disposition of property acquired by the Postal Inspection Service in the course of conducting official investigations. The rule provides a procedure whereby owners of such property may file claims for its return. Where no owner is determined, the procedure results in a declaration that the property is "abandoned" and permits it to be placed in official use or sold. If sold, the proceeds of the sale are required to be placed in the Postal Service Fund established by 39 U.S.C. 2003. While, in general, this disposition of abandoned property or its proceeds is appropriate and is expected to continue to be followed in the future, there are instances in which the sharing of such property or proceeds with federal, state or local law enforcement agencies is desirable. This amendment simply gives the Chief Postal Inspector authority to allow this alternative disposition.

List of Subjects in 39 CFR Part 946

Administrative practice and procedure, Claims, Currency, Law enforcement, Postal service.

Accordingly, the Postal Service Amends 39 CFR part 946 to read as follows:

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

1. The authority citation for part 946 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401 (2), (5), (8), 404(a)(7), 2003, 3001.

2. Revise § 946.11 to read as follows:

§ 946.11 Disposition of property declared abandoned.

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Chief Postal Inspector with federal, state or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of abandoned property are to be shared with other law enforcement agencies, they shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-17694 Filed 7-27-90; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[FCC 90-173]

Aviation Services; Making an Additional Frequency Available to Aeronautical Utility Mobile Stations at Airports With a Control Tower

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action was taken in response to a petition submitted by the Federal Aviation Administration (FAA) which cited recurring runway incursions as a safety hazard. The Commission has decided to permit aeronautical utility mobile stations at airports served by a control tower to transmit on the local control (tower) frequency as well as the ground control frequency. The resulting improved communications capability will help the FAA prevent inadvertent conflicts between aircraft and vehicles operating in the vicinity of an active runway.

EFFECTIVE DATE: July 30, 1990.

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

FOR FURTHER INFORMATION CONTACT: J. Joy Alford, Aviation & Marine Branch, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, adopted April 27, 1990, and released July 25, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. This order amends part 87 of the Commission's Rules 47 CFR part 87, governing the aviation radio services, to make an additional frequency available to aeronautical utility mobile stations at airports with a control tower. Aeronautical utility mobile stations provide communications between the control tower and vehicles operating on airport movement areas such as runways, taxiways and other areas used for taxiing, take-off and landing of aircraft. Vehicles typically equipped with aeronautical utility mobile stations include airport rescue and fire fighting

vehicles, snow removal vehicles and airport maintenance vehicles. At airports with a control tower, the frequency assigned to aeronautical utility stations is the ground control frequency. The FAA requests that aeronautical utility mobile stations operating at airports with a control tower also be permitted to transmit on the local control (tower) frequency provided the airport Air Traffic Manager approves of this additional use of the tower frequency. The change is non-controversial and constitutes a minor amendment to the rules in which the public is not likely to be interest. Accordingly, the notice and comment provisions and the effective date requirements of the Administrative Procedure Act are inapplicable. See 5 U.S.C. 553 (b) and (d), 47 CFR 1.412(b) and 47 CFR 1.427(b).

2. Because a Notice of Proposed Rule Making is not required, the Regulatory Flexibility Act, Public Law 93-354, does not apply.

3. Authority for this action is contained in sections 4(i), 5(c)(1) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c)(1) and 303(r).

Ordering Clause

4. *It is ordered* that part 87 of the Commission's Rules is amended as shown at the end of this document, effective upon publication in the Federal Register.

Lists of Subjects in 47 CFR Part 87

Aeronautical utility, ATC, ATC frequency, RCO, Control tower, Unicom, FAA flight service stations, Aviation services, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Rule Changes

Part 87 of chapter I, title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-158, 301-609.

2. Section 87.347 is amended by adding a new paragraph (c) to read as follows:

§ 87.347 Supplemental eligibility.

* * * * *

(c) An applicant for an aeronautical utility station requesting authority to transmit on the local control (tower) frequency or on the control tower remote communications outlet (RCO) frequency must attach a copy of a memorandum of agreement between the applicant and the Air Traffic Manager of the airport control tower that approves the requested use of the tower or RCO frequency.

3. Section 87.349 is amended by revising paragraph (a) to read as follows:

§ 87.349 Frequencies.

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower, RCO or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. In addition to the ground control frequency, an aeronautical utility station at an airport served by a control tower or RCO may be assigned the tower or RCO frequency if the assignment is specifically approved by the FAA as provided for in § 87.347(c). The frequencies assigned are normally from the band 121.600-121.925 MHz.

* * * * *

[FR Doc. 90-17701 Filed 7-27-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 89-113; FCC 90-262]

Private Operational-Fixed Microwave Service; Rechannelling the 2450-2483.5 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Report and Order* that rechannellizes the 2450-2483.5 MHz frequency band into twenty-six channel pairs with a channel bandwidth of 625 kHz and a separation between transmit and receive frequencies of 17.25 MHz. Applicants may be authorized up to four adjacent channels upon justification for the wider bandwidth. Systems presently operating in this band are grandfathered under the terms of their initial authorizations. The intended effect is to further more efficient use of the 2450-2483.5 MHz band for terrestrial fixed microwave operations.

EFFECTIVE DATE: September 10, 1990.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau,

Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order (R/O)*, PR Docket No. 89-113, adopted July 9, 1990, and released July 25, 1990. The full text of the *R/O* 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 copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037. (202) 857-3800.

Summary of Report and Order

1. Prior to 1985, part 94 licensees had access to a frequency band that extended from 2450-2500 MHz. This band contained thirty channel pairs with each channel having an 800 kHz bandwidth and a separation between transmit and receive frequencies of 24.4 MHz. In 1985, the 2483.5-2500 MHz portion of this band was reallocated to the newly created Radiodetermination Satellite Service (RDSS). This action eliminated the upper frequency of twenty-one of the thirty available channel pairs in the 2450-2500 MHz band, making them unusable for two-way duplex operation which is the predominant use of the band. A Petition for Rule Making to rechannel the 2450-2483.5 MHz band was filed by the Harris Corporation.

2. In May 1989, a *Notice of Proposed Rule Making (Notice)*, 54 FR 24006, June 5, 1989, was released that proposed to amend part 94 of the Commission's Rules by channelizing the 2450-2483.5 MHz (2.4 GHz) frequency band into twenty-six channel pairs with a channel bandwidth of 625 kHz and a 17.25 MHz transmit/receive frequency spacing. The *Notice* also proposed to permit up to four adjacent channels to be "stacked" to obtain a maximum 2500 kHz channel bandwidth. Comments were requested on whether systems presently authorized in this band should be permitted to continue to operate under the old channeling plan, if a sunset date should be established when existing systems would be required to conform to the new rules and whether a 10 MHz wide contingency channel should be established to provide emergency restoration, maintenance bypass and other temporary-fixed services.

3. Upon consideration of the comments, the Commission finds it in the public interest to amend § 94.65(e) of the Rules to rechannelize the 2.4 GHz frequency band. Rules are adopted that contain a channeling plan consisting of

twenty-six 625 kHz wide channels that have a 17.25 MHz separation between the transmit and receive frequencies. Applicants may be authorized up to four adjacent channels upon justification for the wider bandwidth. This action increases the number of available channel pairs and will facilitate the use of digital technology in this band. Systems authorized to operate in the 2.4 GHz band prior to the rules adopted in this proceeding may continue to operate under the rules in existence at the time of authorization. Because the interference potential of a wideband contingency channel outweighs the apparent benefits of such a channel, the Commission declined to implement a contingency channel in the 2.4 GHz band.

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave service, 2.4 GHz frequency band rechanneling, Radio.

Amendatory Text

47 CFR part 94 is amended as follows:

PART 94—[AMENDED]

1. The authority citation for part 94 continues to read as follows:

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

2. 47 CFR 94.65 is amended by revising paragraph (e) to read as follows:

§ 94.65 Frequencies.

* * * * *

(e) 2450-2500 MHz:

(1) This band is shared with other communications services and is not subject to protection from interference from industrial, scientific, and medical devices operating on 2450 MHz.

(2) Stations licensed in this band under this part prior to (effective date of rules) are grandfathered and may continue their authorized operations. Stations licensed in the 2483.5-2500 MHz portion of the band as of July 25, 1985, or on a subsequent date as a result of submitting an application on or before July 25, 1985, are grandfathered, and may continue operations, subject only to license renewal, on a co-primary basis with the Radiodetermination Satellite Service.

(3) 625 KHz bandwidth channels. The normal bandwidth authorized will be 625 KHz. Upon adequate justification, additional contiguous channels may be authorized to provide up to a 2500 kHz bandwidth.

PAIRED FREQUENCIES (MHZ)

Transmit (or receive)	Receive (or transmit)
2450.3125.....	2467.5625
2450.9375.....	2468.1875
2451.5625.....	2468.8125
2452.1875.....	2469.4375
2452.8125.....	2470.0625
2453.4375.....	2470.6875
2454.0625.....	2471.3125
2454.6875.....	2471.9375
2455.3125.....	2472.5625
2455.9375.....	2473.1875
2456.5625.....	2473.8125
2457.1875.....	2474.4375
2457.8125.....	2475.0625
2458.4375.....	2475.6875
2459.0625.....	2476.3125
2459.6875.....	2476.9375
2460.3125.....	2477.5625
2460.9375.....	2478.1875
2461.5625.....	2478.8125
2462.1875.....	2479.4375
2462.8125.....	2480.0625
2463.4375.....	2480.6875
2464.0625.....	2481.3125
2464.6875.....	2481.9375
2465.3125.....	2482.5625
2465.9375.....	2483.1875

The 2466.25-2467.25 MHz portion of this band is an unchanneled band between paired transmit and receive frequencies. Use of frequencies in this band with up to 1 MHz authorized bandwidth will be considered on a case-by-case basis and will be subject to the technical standards for the 2450-2500 MHz band as outlined in this part. Authorization will be made on a secondary basis only.

* * * * *

3. 47 CFR 94.71(b) is amended by replacing the entry in the frequency table for the 2450-2500 MHz band with entries for the 2450-2483.5 and 2483.5-2500 MHz bands, and revising footnote 2 in the table to read as follows:

§ 94.71 Emission with bandwidth limitations.

* * * * *

(b) * * *

Frequency band MHz	Maximum authorized bandwidth
2450-2483.5.....	625 kHz ²
2483.5-2500.....	800 kHz

² 1250 kHz, 1875 kHz, or 2500 kHz on a case-by-case basis.

* * * * *

Federal Communication Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17702 Filed 7-27-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. 8; Notice 90-24]

RIN 2105-AB55

Standard Time Zone Boundary in the State of Kansas, Relocation of Time Zone Boundary

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: At the request of the Board of Commissioners of Kearny County, Kansas, DOT is relocating the boundary between mountain and central time in the State of Kansas in order to place all of Kearny county in the central time zone. The Department finds that the change would "serve the convenience of commerce."

EFFECTIVE DATE: This change is effective at 2 a.m. MDT (CST), Sunday, October 28, 1990. This effective date and time coincide with the change from daylight saving time to standard time.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, room 10424, 400 Seventh Street SW., Washington, DC 20590. (202) 366-9306.

SUPPLEMENTARY INFORMATION:

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 261), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

The Petition for Rulemaking

The Board of County Commissioners of Kearny County passed a resolution on June 30, 1989, requesting the Department of Transportation to move the central standard time zone line westward to include all of Kearny County. The resolution, which was received by the Department in early August 1989, noted that the major industries of the county currently operate on central time and that the change would unify the whole county. A "straw poll" conducted in the county by the County Commissioners

indicated that 274 out of 447 of those people expressing their opinions (61 percent) favored the change. The resolution found that it would "serve the convenience of commerce" to move the time zone boundary and called upon the Department to make the change effective October 29, 1989. In a follow-up letter dated October 6, 1989, the representative of the County Commissioners noted that all the state offices and businesses located to the east of the county operate on central time, and that the time difference results in the loss of up to three hours per day in telephone communication time. Both major gas production companies located in Kearny County operate their plants and schedule their field employees on central time. All three of the major feedlots in Kearny County operate on central time. All of the radio and television programming that is broadcast into the County is done so on a central time schedule. Finally, the letter noted that the school system entered into a cooperative agreement with other school systems in the area to obtain satellite television programming for classroom use. The letter noted that because part of the county is on mountain time, there have been numerous scheduling difficulties in implementing programming.

Procedure for Changing a Time Zone Boundary

Under the DOT procedures to change a time zone boundary, the Department begins a rulemaking proceeding if the highest elected officials in the area make a *prime facie* case for the proposed change. The petitioners made this showing and the Department issued a notice of proposed rulemaking (54 FR 48117, November 21, 1989) proposing to make the change and requesting public comment. The comment period closed January 22, 1990. Under DOT procedures, the General Counsel analyzes all of the comments and decides whether the change would satisfy the statutory requirements. If he believes that it would not, he ends the proceeding and leaves the time zone boundaries unchanged. If he believes that it would, he forwards his recommendation to the Secretary of Transportation, who alone has authority to make the change.

Public Hearing

A public hearing was held in Lakin, Kansas, on November 30, 1989. The hearing, which was filled to overflowing, was attended by over 90 people and chaired by a representative of the Department. About 35 people presented their views. Sixteen supported the

change and 19 opposed it. An informal show of hands indicated that the approximately 90 people at the hearing were evenly split on whether to make the change. The participants at the hearing were unanimous, however, that if the proposed change was made, it should be made in the fall in order to minimize inconvenience. If the proposed change had been made effective during the April changeover from standard time to daylight saving time, residents of Kearny County would have had to have moved their clocks forward two hours to compensate for the change to daylight saving time. There was also substantial discussion about whether the change could be made at the end of summer, just before school began. The DOT representative explained that normally a change is made either at the beginning or end of daylight saving time because that is the most commonly accepted moment that people focus on time issues. In addition, an earlier change would require residents to move their clocks forward one hour at that earlier date in order to be on central daylight time, and then move it back again when the area returns to standard time. The representative, however, promised to raise it with the decisionmakers and have it addressed in any final decision.

Written Comments

A total of 46 written comments were submitted to the docket, signed by 54 people. Eighteen of the letters favored the proposed change and 23 of the letters favored retention of mountain standard time.

Those opposing the change made a number of different arguments. They noted that based on geography and position of the sun ("sun time"), the area is appropriately in mountain time. One person noted that if the proposed change were made, the problem of being "out of sync" with the sun would be exacerbated during daylight saving time when the whole state, in effect, moves one time zone to the east. Another noted that the central time zone already includes more areas, east to west, than the other zones in the continental United States. A different commenter observed that Lakin and Chicago do not have the same sun time and, therefore, should not be in the same time zone. Finally, one letter noted that the climate in western Kansas is very hot in mid-summer and later sunsets would make sleeping more difficult and would result in increased use of air conditioning.

Many of the commenters focused on the ongoing nature of this dispute. Several noted that the controversy has been raging for 40 years and that no

matter where the line is drawn, someone will be unhappy. This area has considered a time change three times in the past. One commenter stated that DOT should not make the change because "the count" is so close. Other commenters were more philosophical and asked rhetorical questions such as, "where does one draw the line?" or stated, "if it ain't broke, don't fix it." One person observed that the current system makes one think a bit, but a little thought might be good for people. Several commenters argued that the line should never have been moved from Dodge City.

A number of people noted that the change would result in later sunrises. They were particularly concerned that this would be unsafe and uncomfortable for school children, who often must wait for buses on cold, dark rural roads and travel long distances, often in bad weather. A few mothers noted that school-age children already board buses well before daylight and begin school in the dark, for at least part of the year. One person noted that although the school district could start school later to accommodate the proposed time change, it would disrupt family schedules and leave children unattended.

Several commenters noted that later sunrises make farming and ranching more inconvenient because it is cold and dark in the first few hours of the work day. One stated that central time would waste farmers' time because farmers get up early but cannot work without the sun. Another believed that the proposed change would disrupt the natural schedule of getting up when it is light and going to bed in the dark. Others focused on farmers' long hours. For example, one commenter noted that she and her husband get home from the field at 9:00 or 9:30 p.m. They need to fix dinner and put their children to bed, which would be an hour later on central time. During the harvest, they often do not get home until 11 p.m. or midnight, particularly if a storm is expected.

A number of commenters focused on the difficulties of working a farm or ranch. One noted that, "[a]lot of farmers out here still work long hard hours by the sun * * * remember we are the bread basket of America." Several farm wives noted that they and/or their husbands would work the extra hour of daylight in the evening, and would get home an hour later. One woman noted that this change would be particularly difficult when the spouse works outside the home. She argued that families need that time together in the evenings.

Others focused on the practical problems the proposed change might cause for farmers. Several were

concerned that one could not get parts in the late afternoon, and that hours of work time would be wasted when there is a breakdown. In a similar vein, one farmer was concerned that he would have to wait until morning to get repairs. The manager of the Lakin Farmers Cooperative stated at the public meeting that 90 percent of the farmers he has polled favored staying on mountain time. In conclusion, these commenters argued that the area is primarily agricultural, that mountain time fits their working day better, and that no change should be made.

In terms of other types of commerce, one commenter noted that, "[t]his small town must seek every opportunity to stay alive, and central time may decrease its livelihood 15-20 percent." The commenter did not, however, elaborate on how he derived this estimate. Owners of the Dairy Queen, who employ 25 people, noted that the current time zone boundary allows local restaurants to serve more customers by spreading out the time when customers arrive for meals. Similarly, one person stated that the grocery store benefits by having its business spread out during the day, and the owner of a dry cleaning establishment was concerned that business would decrease if the change were made.

A few commenters noted that they do business, go to church and visit with family members who are on mountain time. One person noted that the current system is advantageous because when she goes over to the central time zone, she is able to avoid the most crowded hours. A different person observed that most stores in Garden City, the closest neighboring town of substantial size, are open in the evenings, so shopping is convenient for people who live on mountain time. One letter said that the current system is advantageous to the Administrative Hearing Officer who drives out from Wichita because he is able to hear cases in both Kearny and Grant County, which is on central time.

Almost all the comments from those opposing the change noted that they had experienced no problems living on mountain time and that their strong personal preference was to keep the current system. Many noted that the time zone boundary had to be somewhere and that residents were already used to making any minor adjustments that were required. Several commenters stated that long-time residents supported retention of mountain time and that it was only some "newcomers" to the community who were unhappy. Some of these commenters stated that if individuals did not like mountain time, they could

move back to central time. Others focused on specific examples of difficulties raised by proponents of the change. In general, the opponents argued that attorneys, court personnel and businesspeople are intelligent and have adjusted to the current system.

Those in favor of placing the entire county on central time tended to focus on the confusion and inconvenience of living and working in two time zones and on how the proposed change would "suit the convenience of commerce."

Several commenters noted that the current time zone boundaries create "an island of time." Areas to the north, south and east of the county are all on central time. This geographical anomaly is exacerbated by the fact that the community tends to look east for most of its needs. Another characterized the part of the county on mountain time as a "sore thumb" because part of the county is already on central time.

Many of the commenters focused on recent changes to the area. One commenter noted that since 1970 (the year when Deerfield and the eastern part of the county were placed on central time by the Secretary of Transportation) the population in Lakin has increased 24.8 percent (from 1,658 to 2,205) and the population in the county has increased 24.6 percent. The commenter stated that this increase is largely due to the recent growth of the beef cattle industry in the area. He noted that the feeding, slaughtering and packing of beef has become a major industry requiring more employees. In addition, natural gas production is a major element of the community's economy. In the last twenty years, the commenter noted that there is a greater reliance on television and radio for serving needs for entertainment, news, educational programming, and weather information. Most of the largest employers in the area, including Iowa Beef Packing, Colorado Interstate Gas Plant, the Natural Gas Booster Plant, K-N Energy, Enron, Panhandle Eastern, and all three of the major feedlots operating in the county, operate on central time. Several commenters noted that a significant percentage of residents commute to gas and beef processing plants operating on central time. Another estimated that the major gas companies employ over two hundred people in the Lakin area and that all these employees work on a central time schedule. Several of these companies switched to central time within the last few years, which has increased the problems associated with time observance in the area.

One commenter stated that 75 percent of taxes are paid by the gas industry, utilities and nonresident land owners. Other commenters estimated that between 70 to 90 percent of workers who work outside the immediate community work in central time. Several noted that they are involved in central time for most of their business (over 90 percent) and that almost all supplies come from the east. One commenter said that much of her business (slaughtering beef) comes from the central time zone.

The effect of the proposed time change on school activities was also a continual theme. The area is part of a special education cooperative encompassing eighteen school districts. One commenter estimated that these school districts have a total enrollment of approximately 9,300 students. Seven thousand eight hundred of these students are in districts on central time, while three districts comprising about 1,500 students operate on mountain time. The commenter also noted that there are scheduling difficulties and a great deal of lost time when special education students living in mountain time have to attend classes in central time and vice versa. He also noted that itinerant teachers have difficulty in scheduling between the two time zones.

Several commenters highlighted the fact that nine school districts recently formed a consortium to provide instructional television programming to participating schools. Because eight of the schools are on central time, a number of commenters believe that Lakin's observance of mountain time causes continual scheduling problems. In 1982, interscholastic athletic leagues, encompassing eleven school districts, were reorganized. One commenter noted that Lakin is the only school in the league that is on mountain time. Another was concerned that students traveling out of town to games or other school activities must miss class because of the time differential. One former school teacher characterized coordinating school activities as a "nightmare." Several commenters noted that parents with school-age children have difficulty in attending school activities because of the time difference either with their work schedules or when the children travel to the central time zone. Another stated that the local school system was operating at a "decided disadvantage" because virtually all of the school's activities are centered in, around, and with school districts that operate on central time. One person noted that outreach classes are scheduled on central time, which interferes with the

work schedule of those working on mountain time.

A number of commenters focused on communications. All radio and television stations operate on central time. The public television station is transmitted from central time and its program guides are published in central time. In addition, the most popular daily newspapers come from the east, particularly from Garden City, Hutchinson, and Wichita. (A weekly newspaper is published in Lakin.) Telephone service is provided by the Pioneer Telephone Cooperative. One commenter noted that of the seventeen communities served by the Telephone Cooperative, only four are on mountain time. On a more personal level, many commented that it was confusing and difficult to set up appointments, organize meetings, and generally communicate what time things were to happen.

In terms of transportation, several people noted that there is no commercial airport in the county. The nearest commercial airport is in Garden City. They noted that most passengers drive to Garden City, Wichita or Denver for air service. Those wishing to take the train (AMTRAK) must board and alight in Garden City. One bus company stops in Lakin, but operates its schedules on central time.

Many focused on needing to go to the central time zone to obtain needed services and participate in religious and cultural activities. One commenter estimated that ninety percent of the residents that leave the community for schooling, recreation, health care or religious worship go to the central time zone. Another commenter noted that eyeglasses, wearing apparel, shoes, variety items, floor coverings and other necessities are not available in Lakin and must be obtained in the central time zone. One woman noted that those wanting a choice of large grocery stores must travel to Garden City. One commenter challenged the allegation by those opposing the change that central time would hurt local businesses. He stated that after 5 p.m. mountain time, all one can buy in Lakin are a few groceries and some auto parts.

Several commenters noted that those wishing to consult medical specialists or those who need a large hospital usually go to Garden City, Great Bend, Halstead, Wichita or Kansas City. Another noted that many people in Lakin attend church in Deerfield or Ulysses, which are on central time. One minister noted that he serves congregations across time zone boundaries and that the proposed

change would simplify his job. Another noted that many attend community concerts in Garden City, Dodge City or Liberal, and that it is difficult to arrange one's schedule in order to get there in time. One woman noted that change would provide enhanced recreational opportunities because it would allow people, especially young ones, to go out in the evening to Garden City.

Several comments focused on how the current time situation makes it difficult to communicate with Federal, State and regional agencies. One commenter observed that although we live in the computer age, people in western Kearny County can only be in contact with the rest of the state for four hours a day because the time difference results in the loss of one hour in the morning, two hours at lunch and one hour in the afternoon. Another wryly observed that it is not good business to pay people to work eight hours when the public gets the service for only four hours. The County Attorney stated that he had experienced problems scheduling judges and attorneys. The County Treasurer argued that she cannot do her job effectively and efficiently to the extent that customers cannot be served because of a difference in time. Several people noted that many in the state government do not know that western Kansas is on a different time and even when they do know, they make no accommodations for the difference. For example, offices in the courthouse are supposed to send in reports by 4 o'clock central time but have difficulty in meeting this deadline because of the time difference.

A number of farmers supported the proposed change. Several farmers stated that they believe that a majority of farmers already live by central time. Two commenters stated that many people in the eastern part of the county, in the north three or four miles, and in the south part of the county observe central time in their private lives. These farmers find it inconvenient to wait until mid-morning or later for the bank to open and to do other business in Lakin. One stated that he loses business because of the time difference.

Most of these commenters stated that farmers work by the sun and not the clock. One observed that during harvest and other critical times, farmers work around the clock, and that the official time zone designation is irrelevant. Another person commented that although it is primarily farmers who are opposed to the change, their concerns are unfounded. One commenter stated, for example, that he had no problems getting parts in the late afternoon,

particularly during the harvest. Another noted that in a small community, one could call the owner of the parts store at home and get whatever is needed, whenever needed. A different commenter noted that at least some tractors and other farm equipment have lights that allow farmers to work extended hours during the harvest. Apparently, this means that farmers could begin work early or at least go out to the fields early without major inconvenience.

Like the commenters in favor of retaining mountain time, a number of commenters favoring the change expressed their personal preference. Contrary to the allegations of some opposing the change, a number of those favoring central time were long-time residents of the area. One commenter stated that "those on central time will never go back to mountain time so I think the rest of us should go to central time and have unity for a change." Others focused on the difficulty of living in a "divided" household. One noted that, although there are advantages to mountain time, those advantages are outweighed by not having to "fight the time." Another stated that those wanting to remain on mountain time are "very selfish" and are not thinking of those who are inconvenienced. One commenter noted:

To continue imposing mountain time on the western two thirds of Kearny county would only perpetuate the time utilized by our early settlers in an era that has brought the computer, educational cooperatives with other communities, television, fiber optic telecommunications and major employers operating on central time. Changes in our lifestyles and work ethics seem to dictate that we be permitted a time change to meet our needs in dealing with our neighbors to the east, north and south.

Finally, a number of commenters asked that the time zone boundary be moved to the state border to simplify matters and unify the state.

The Decision

After carefully weighing all the comments received at the hearing and in the docket, we have decided to place all of Kearny County on central time, as proposed. This decision was, in many ways, a difficult one. As noted above, the community is split on the issue and there are strong feelings on both sides. We were moved by the comments of the many farmers and ranchers who sincerely believe that the proposed change would make their lives more difficult. We also understand the feeling of many residents who like things the way they are and who, to date, have not

experienced any problems with their proximity to the time zone boundary. Finally, we note, that in terms of "sun time" the change will mean that the sun will be at the highest point later in the day, particularly around the summer solstice.

Despite all these valid concerns, the Department is required to act pursuant to the statutory criteria set forth in the Uniform Time Act. The Act states that "[t]he limits of each zone shall be defined by an order of the Secretary of Transportation, having regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce * * *". The Department has traditionally defined commerce very broadly to include consideration of all the impacts on the community from a change in the time zone. For example, the Department looks at:

- Where businesses in the community get their supplies and where they ship their goods and products;
- Where the television and radio broadcasts originate;
- Where newspapers are published;
- Where the community gets its bus and passenger rail service;
- Where the nearest local and major airports are;
- What percentage of residents work outside the community and where the residents work;
- What the major elements of the community's economy are; and

If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes.

In addition, the Department considers any other impacts the proposed time zone change might have on the community and whether the proposed change has community support.

We find that the proposed change requested by the County Commissioners "suits the convenience of commerce." To the extent that the area is not self-sufficient, it looks to the east and has many ties to the central time zone. Although we would prefer that this change had overwhelming community support, we are satisfied that the County Commissioners made a *prima facie* case and that case was backed up with substantive comments in the record.

We believe that this change will have many benefits for the community. It will unify the county and allow the western part of the county to be more integrated with the rest of the state. It should simplify commerce by allowing the

suppliers and recipients of most goods and services, and employers and employees to be on the same time. It hopefully will improve the quality of life by reducing confusion and allowing easier access to the nearest commercial, medical and cultural centers.

We recognize that some people will be unhappy about this decision. We believe, however, that there are many things that they can do to mitigate any inconvenience.

Effective Date

This final rule is effective at 2 a.m. MDT, October 28, 1990. As noted above, participants at the November 1989 public hearing were unanimous that the change should be made in the fall. We have decided not to adopt the suggestion that the change be made to coincide with the beginning of the school year because that would be too confusing to people outside the area. Many individuals, groups and companies, such as scientists, computer specialists, geographers and others, have a strong interest in knowing the correct time designation for every location in the United States and we believe it would be unnecessarily complex to try to communicate an alternative date to them. We expect that the long leadtime before this final rule is effective will alleviate most, if not all, of any potential inconvenience to the local school authorities.

Regulatory impacts

I certify under the criteria of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities because of its highly localized impact. Furthermore, it is not a major rule under Executive Order 12291, nor a significant rule under DOT Regulatory Policies and Procedures, 44 FR 11034, because of its localized impact. The economic impact is so minimal that it does not warrant preparation of a full regulatory evaluation. The final rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and I have determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because of the local impact of this proposal, we solicited the views of the local and state governments. Finally, I have determined that this rulemaking is not a major

Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and that an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

In consideration of the foregoing, DOT amends title 49, Code of Federal Regulations, part 71 as follows:

PART 71—[AMENDED]

(1) Authority for part 71 continues to read:

Authority: Secs. 1-4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2-7, 80 Stat. 107, as amended; 15 U.S.C. 260-267.

(2) Paragraph (d) of § 71.7 is revised to read:

§ 71.7 Boundary line between central and mountain zones.

(d) *Kansas-Colorado.* From the junction of the west line of Hitchcock County, Nebraska, with the Nebraska-Kansas boundary westerly along that boundary to the northwest corner of the State of Kansas; thence southerly along Kansas-Colorado boundary to the north line of Sherman County, Kansas; thence easterly along the north line of Sherman County to the east line of Sherman County; thence southerly along the east line of Sherman County to the north line of Logan County; thence westerly along the north line of Logan County to the east line of Wallace County; thence southerly along the east line of Wallace County to the north line of Wichita County; thence westerly along the north line of Wichita County; thence westerly along the north line of Wichita County to the east line of Greeley County; thence southerly along the east lines of Greeley County and Hamilton Counties; thence westerly along the south line of Hamilton County to the Kansas-Colorado boundary; thence southerly along the Kansas Colorado boundary to the junction of that boundary with the north boundary of the State of Oklahoma.

Issued in Washington, DC, on July 25, 1990.
Samuel K. Skinner,
Secretary.

[FR Doc. 90-17689 Filed 7-25-90; 2:04 pm]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-08; Notice 6]

RIN 2127-AD12

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); DOT.
ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In November 1989, this agency published a final rule mandating the installation of lap/shoulder safety belts in all forward-facing rear outboard seating positions in convertible passenger cars, light trucks and multipurpose passenger vehicles (e.g., passenger vans and utility vehicles), and small buses. This new requirement applies to all such vehicles manufactured on or after September 1, 1991. NHTSA received 14 petitions for reconsideration of this rule.

In response to these petitions, the agency is making several changes to the final rule published in November 1989.

DATES: The amendments to S7.1.1.3 and S7.1.1.5 are effective on September 1, 1991. That is the date on which the version of those requirements published in the November 1989 final rule would have become effective. The other amendments made by this rule take effect on January 28, 1991. Vehicles manufactured on or after September 1, 1991 must be certified as complying with the requirements of this rule.

Any petitions for reconsideration of this rule must be received by NHTSA no later than August 29, 1990.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 87-08; Notice 6 and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, NRM-12, Room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-4911.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1988 (53 FR 47982), NHTSA published a notice of proposed rulemaking (NPRM) proposing to require rear seat lap/shoulder belts to be installed in certain new vehicles. Specifically, this NPRM proposed to require passenger cars (including convertibles), light trucks, light

multipurpose passenger vehicles (MPVs), and small buses to be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. Additionally, the NPRM proposed that these rear seat lap/shoulder belts be equipped with a particular type of retractor, that such belts be integral (i.e., the shoulder belt could not be detachable from the lap belt), and that such belts comply with some of the comfort and convenience requirements in Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208).

The agency received more than 70 comments on this NPRM. The issue of whether passenger cars other than convertibles should be equipped with rear seat lap/shoulder belts was relatively straightforward and noncontroversial. The consensus of the commenters was that such a requirement would be appropriate. Hence, to ensure the earliest possible implementation of such a requirement, NHTSA published a final rule on June 14, 1989 (54 FR 25275). That rule addressed only passenger cars other than convertibles, and required that all such vehicles manufactured on or after December 11, 1989 be equipped with rear seat lap/shoulder belts. That rule also expressly deferred resolution of all of the other issues proposed in the NPRM until a later date.

NHTSA published a final rule addressing the other issues raised in the NPRM, including the other vehicle types required to have rear seat lap/shoulder belts, the types of retractors with which those safety belts should be equipped, and the other performance attributes those safety belts should have, on November 2, 1989 (54 FR 46257). The agency received 14 petitions for reconsideration of this rule. This notice responds to those petitions. For the convenience of the reader, this notice uses the same organization and format that the November 2, 1989 final rule did. When a section heading used in the November 2, 1989 preamble is not set forth in this preamble, it means that no petitions for reconsideration requested changes to the rule's provisions discussed in that section.

Requirements of the Rule

Seating Positions Subject to the Requirements

The November 2, 1989 rule limited the requirement for rear seat lap/shoulder belts to outboard seating positions only. The term "outboard designated seating position" is defined at 49 CFR 571.3 as a designated seating position that, among

other things, is less than 12 inches from the inside of the vehicle. A separate definition of "outboard designated seating position" was set forth in the November 1989 final rule to exclude seating positions adjacent to aiseways running between the seating position and the rear side of the vehicle, even if those seating positions were less than 12 inches from that side of the vehicle. This exclusion of aisleway seats from the rear seat lap/shoulder belt requirement reflected NHTSA's determination that the shoulder belt stretched across the aisleway of a vehicle could cause entry and exit problems for occupants of seating positions to the rear of the aisleway seating position.

The November 1989 rule excluded aisleway seats from the rear seat lap/shoulder belt requirement only if the aisleway seats were in trucks, MPVs, and buses. NHTSA did not extend this exclusion to aisleway seats in the rear of passenger cars because the agency was not aware of any passenger car designs either currently in production or to be produced in the future that incorporate aisleways next to the second row of seats so as to permit access to the third and other more rearward rows of seats.

In its petition for reconsideration, Ford Motor Company (Ford) asserted that the exclusion of aisleway seats from the rear seat lap/shoulder belt requirement should be broadened to apply to aisleway seats in passenger cars as well as the other types of vehicles. According to Ford, the reasons for exempting aisleway seats in vans from rear seat lap/shoulder belt requirements are equally applicable, irrespective of whether the vehicle is classified as a passenger car, truck, MPV, or bus. Ford is implicitly suggesting that passenger vans, especially minivans, could be classified as passenger cars, and that, if such a classification were made, the aisleway seats in the vans would be required to be equipped with lap/shoulder belts if the aisleway seats were outboard seating positions. Ford believes that such aisleway seats should continue to be excluded from the rear seat lap/shoulder belt requirement, regardless of whether the minivan is classified as a passenger car, light truck, MPV, or bus.

NHTSA agrees with Ford's point that the same safety standards should apply to light trucks, MPVs, buses, and passenger cars, as reflected in the agency's rulemaking actions extending provisions that had applied only to passenger cars so that those same provisions will now also apply to light trucks, MPVs, and buses. Accordingly,

this rule includes the same definition of "rear outboard designated seating position" for passenger cars that was previously specified for trucks, MPVs, and buses.

Retractor Types Required for Rear Seat Lap/Shoulder Belts

The NPRM contained a detailed discussion of the agency's previous statements on this subject, and repeated the agency's previous conclusion that only ELRs should be permitted as the retractor for the lap belt portion of the lap/shoulder belt system. See 53 FR 47987-47989; November 29, 1988. This proposed requirement was based on the fact that ELRs for the lap belt made the belt system more comfortable and convenient for adult occupants, thereby tending to increase use of the belt system. Although active children can make some child restraints unstable if the child restraint is secured by a lap belt that incorporates an ELR, NHTSA knows of no data showing that this potential instability would affect the safety performance of the child restraint in a crash. Additionally, the agency stated that products called "locking clips" can be installed on the webbing of belts equipped with an ELR to prevent webbing movement.

After analyzing its proposal in response to the many comments received on this subject, NHTSA concluded that the low-speed movement of child safety seats held by safety belts that use an ELR seems to have given rise to questions and concerns about the safety and effectiveness of child seats when used with such belts. In the preamble to the final rule, NHTSA stated:

Even if these questions and concerns have not been substantiated, the public may not be as likely to use child safety seats if there are perceived questions about the effectiveness of those seats. NHTSA has concluded that it is appropriate to take action to remove those perceived questions, so as to maintain public trust and confidence in the efficacy of child seats. 54 FR 46262; November 2, 1989.

To implement this conclusion, NHTSA devised an approach in its final rule intended to both ensure comfort for adult occupants of safety belt systems and tight securing of child safety seats by those same safety belt systems. First, the final rule required that any lap belt or lap belt portion of a lap/shoulder belt installed at an outboard seating position in compliance with Standard No. 208 be equipped with an ELR. In its petition for reconsideration, Ford correctly noted that this requirement would mean that side-facing and rear-facing outboard seating positions would be required to be equipped with ELRs for the lap belts,

even though side-facing and rear-facing outboard seating positions were expressly excluded from the lap/shoulder belt requirements. Ford asserted that this was a major change from the proposal, which had been limited to forward-facing outboard seating positions, and that insufficient leadtime had been permitted to allow it to install ELRs on the lap belt in its vehicles with side-facing seats (such as extended cab pickups) and rear-facing seats (such as station wagons).

Upon reconsideration, NHTSA has decided that this provision of the final rule was overly broad. The agency will examine the issue of whether it may be appropriate to amend the retractor requirements for side-facing or rear-facing outboard seating positions. If NHTSA decides to propose such an action, that proposal will be the subject of a separate rulemaking action. For this rulemaking action, however, the agency did not intend to establish or amend any requirements, including retractor requirements, for seating positions that are not forward-facing or adjustable to a forward-facing position. See 54 FR 46258-46259; November 2, 1989. Therefore, in response to Ford's petition, this notice limits the retractor requirements of S7.1.1.3 to seating positions that are forward-facing or adjustable to a forward-facing position.

The second prong of the final rule's approach to ensuring adult comfort and tight securing of child seats from the same belt systems was a new requirement that safety belts that incorporate an ELR in the lap belt or lap belt portion of a lap/shoulder belt shall provide some means, other than an external device requiring manual attachment or activation, that will prevent any further webbing from spooling out until that means is released or deactivated. This requirement, which was set forth in a new S7.1.1.5 of Standard No. 208, would allow safety belt systems equipped with an ELR to secure child seats as tightly as belt systems equipped with an ALR.

All but one of the fourteen petitioners for reconsideration objected to this new requirement in Standard No. 208. The two primary objections to this requirement did not relate to the merits of promoting the tight securing of child seats. First, the petitioners asserted that the NPRM had not given the public notice or opportunity to comment on such a requirement. Hence, according to this argument, the adoption of such a requirement in the final rule violated the informal rulemaking provisions set forth in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Second, the

petitioners asserted that the absence of any procedures for determining compliance with this requirement meant that the requirement was not stated in objective terms, as required by the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*).

NHTSA has tentatively concluded anew that it is necessary and appropriate for Standard No. 208 to include a requirement to ensure that safety belt systems are both comfortable for adult users and can tightly secure child safety seats. In the November 2, 1989, final rule, the agency sought to achieve this purpose by means of S7.1.1.5. The petitioners for reconsideration did not address the fundamental questions of the necessity for and validity of the agency's underlying purpose. Instead, the petitioners focused exclusively on the means chosen to accomplish that purpose.

NHTSA wants to focus attention on the purpose of the requirement in S7.1.1.5 and away from the details of the means chosen to achieve that purpose. To do so, this rule removes S7.1.1.5 from Standard No. 208. Elsewhere in today's edition of the *Federal Register*, the agency has published a proposal to readopt S7.1.1.5. The proposed S7.1.1.5 includes an objective test procedure for determining compliance. The addition of the compliance test procedure and the opportunity to comment on this new regulatory requirement will eliminate the procedural objections raised in the petitions for reconsideration. Additionally, since S7.1.1.5 as promulgated in the November 1989 final rule was not scheduled to take effect until September 1991, this new notice and opportunity for comment will not result in any needless delays in establishing a new requirement for safety belts to be both comfortable for adult occupants and able to tightly secure child safety seats.

The requirements with which rear seat lap/shoulder belts must comply for readily removable seats. The November 1989 final rule included special provisions for lap/shoulder belts installed at rear outboard seating positions on readily removable seats. Such belts are permitted to detach at the upper anchorage only. If those belts are detachable at the upper anchorage, the means of detaching cannot include any sort of pushbutton release. Ford's petition for reconsideration asked that lap/shoulder belts on readily removable seats be permitted to detach at either the upper or lower anchorage and that the means of detachment should be

permitted to include a pushbutton release.

In the final rule, the agency permitted lap/shoulder belts on readily removable rear seats to be detachable only at the upper anchorage point in response to comments by Ford and GM. Those manufacturers both commented that permitting lap/shoulder belts to be detachable at the upper anchorage would ease the problems of providing lap/shoulder belts at outboard seating positions on readily removable seats. After conducting its own analysis of this question, NHTSA concurred with these comments and adopted the requested provision.

However, in its petition for reconsideration, Ford asserted that limiting the detachment point to the upper anchorage point was "overly design restrictive." This was because, according to Ford, there was no safety reason for permitting the belt system to detach at the upper, but not the lower, shoulder belt anchorage point. While the agency believes there are legitimate safety reasons for permitting the belts to be detachable at only one point, there is no apparent safety purpose served by specifying that the single detachment point must be the upper, and not the lower, shoulder belt anchorage point. Accordingly, this notice amends Standard No. 208 to permit lap/shoulder safety belt systems installed at outboard seating positions on readily removable seats to detach at either the upper or lower shoulder belt anchorage, but not both.

Ford also asked in its petition that Standard No. 208 be amended to permit the means of detachment to be a pushbutton release. In the November 1989 final rule, NHTSA noted that S7.2 of Standard No. 208 has long required safety belt systems to use a single pushbutton buckle that releases the occupant from the lap belt and the shoulder belt simultaneously. Because of this requirement, the agency explained that manufacturers could not use a pushbutton release to detach the safety belt from the vehicle at an anchorage point, because the belt system would then have two pushbutton releases. The agency explained that the requirement for a single pushbutton release helped ensure that an occupant could not easily release either the lap belt or shoulder belt portion of the safety belt system and use only the unreleased portion of the safety belt system. Instead of a pushbutton release at the anchorage point where the safety belt detaches from the vehicle, the agency indicated that manufacturers could use a slide button or slide collar as the release.

Ford asked for reconsideration of this requirement, asserting that a slide button or slide collar release "tends to rattle and provides less control over * * * the fit of the shoulder belt." Even accepting these assertions as correct, NHTSA does not believe they are sufficient reason to permit the use of a pushbutton release as the means for detaching the lap/shoulder belt from the vehicle. As explained in the final rule and above, a pushbutton mechanism that detached a safety belt assembly from the vehicle at an anchorage point would increase the ease with which an occupant could detach either the lap belt or shoulder belt portion of the belt system and use only one part of the safety belt. The agency again concludes that a slide button or slide collar used as the means of detaching a shoulder belt will permit the belt to be detached when the readily removable seat is removed, and minimize the possibility that an occupant will detach a portion of the lap/shoulder belt system when the readily removable seat is in place in the vehicle. To emphasize the agency's intent, express language has been added to the standard prohibiting the use of pushbutton mechanisms to detach lap/shoulder belt systems installed for readily removable seats. With respect to Ford's assertions that slide button or collar releases tend to rattle and present more problems for proper shoulder belt fit, NHTSA concludes that the manufacturers have sufficient engineering expertise to resolve such issues.

Ford asked in its petition for an additional year of leadtime for installing rear seat lap/shoulder belts at outboard positions on readily removable seats, if its request to use a pushbutton release to detach safety belts at such positions were denied. Ford stated that this extra leadtime was needed because it would now be required to make changes to its safety belt systems, the anchorages for those systems, and the seat structure of the readily removable seats to comply with the requirement for a single pushbutton release on a belt system. NHTSA believes that this request is reasonable. Ford's vehicles represent an appreciable percentage of the total number of vehicles equipped with readily removable seats, most notably the Aerostar and Econoline vans. These vehicles do not currently use, nor did Ford plan to begin using, a release mechanism that complies with the requirements that are scheduled to take effect on September 1, 1991. Accordingly, Ford will need to make the changes described in its petition. NHTSA has concluded that an

additional year of leadtime is needed to allow Ford to make the necessary changes. Therefore, this notice delays the requirement for rear seat lap/shoulder belts to be installed at outboard seating positions on readily removable seats for one year, so that it now applies to vehicles manufactured on or after September 1, 1992.

Economic and Other Impacts of the November 1989 Final Rule

The Recreation Vehicle Industry Association (RVIA) filed a petition for reconsideration of the November 1989 final rule, based on the economic impacts that rule would have on vans, especially vans modified by final stage manufacturers and alterers. RVIA asked that vans with a gross vehicle weight rating (GVWR) of more than 6000 pounds be excluded from the requirement for rear seat lap/shoulder belts, instead of the 10,000 pound GVWR cap that was established in the November 1989 final rule. The basis for this request was that there would be lesser safety benefits resulting from rear seat lap/shoulder belts in these vehicles (because the vehicles are "structurally stronger, larger and heavier than passenger cars") and higher costs to install those belts (because of the necessary structural modifications).

NHTSA has reexamined its previous decision in response to this request and determined that RVIA has not presented any reasons for changing the requirements of the previously published rule. Notwithstanding RVIA's general assertions about the differences between large vans and passenger cars, the 1988 fatality rate for large vans was slightly higher than the fatality rate for large cars. These comparative fatality rates show that RVIA's assertion that occupants of large vans have a lesser need for safety protection because of the structural differences between vans and cars is not borne out by real world experience.

The agency has acknowledged that the costs of installing rear seat lap/shoulder belts in vans will be greater than the costs of installing those safety belts in passenger cars, because vehicles other than passenger cars may need structural modifications to accommodate the shoulder belt portion of lap/shoulder belts at rear seating positions. However, the agency has concluded that the structural modifications generally do not pose any serious technical difficulties and that the safety benefits that would result from rear seat lap/shoulder belts in these vehicles were more than sufficient to justify the additional burden. See NHTSA's Final Regulatory Evaluation of

this rule in Docket No. 87-08; Notice 5 and the discussion in the NPRM for this rule at 53 FR 47986; November 29, 1988. These agency conclusions were reached after a thorough consideration of all available data. RVIA's petition sets forth no additional evidence or other reasons to believe that the agency conclusions were wrong, so NHTSA has no basis for changing those conclusions in response to the RVIA petition.

Alternatively, RVIA asked that the rear seat lap/shoulder belt requirement be limited to vans that are within the weight limits established for dynamic testing of manual safety belts, i.e., a GVWR of 8500 pounds or less than an unloaded vehicle weight of 5500 pounds or less. The justification for this request was the costs and burdens that would be imposed on van converters to equip rear outboard seating positions with lap/shoulder safety belts.

NHTSA has often acknowledged that final stage manufacturers and alterers lack the technical expertise and financial resources of the larger manufacturers. Because of the lesser technical and financial capabilities of the final stage manufacturers and alterers, the burdens associated with NHTSA's regulatory requirements will always be proportionally larger for these small entities than for the larger manufacturers. Thus, the relevant question is not whether the burden is proportionally larger for these small entities, but instead whether the burden imposed by a new regulatory requirement is excessive for small entities.

When developing the final rule for rear seat lap/shoulder belts to be installed by small entities like van converters, NHTSA carefully considered the potential burdens the rule would impose on small businesses and determined that any such burdens would be relatively minor. All rear outboard seating positions already installed in the vehicles delivered to van converters for conversion must be equipped with rear seat lap/shoulder safety belts. Thus, if the van converter is not making any modifications to the seating position, it can simply leave in place the rear seat lap/shoulder belt assembly and anchorages installed by the original manufacturer of the vehicle. This imposes no burdens on the van converter.

If the van converter is adding a new rear outboard seating position, or modifying an existing outboard seating position, the van converter will be subject to some additional burdens, but those burdens are far from excessive. For all types of motor vehicles other

than buses, manufacturers (including van converters) have long been required to install lap-only belts and anchorages for those belts at each designated seating position. To certify compliance with these requirements, van converters must now add two weldments or make some simple structural modifications for the lap belt anchorages and install a lap-only belt at every rear outboard seating position it adds to a conversion van. To install lap/shoulder belts, instead of lap-only belts, at those seating positions, the van converter must add an additional weldment or make an additional simple structural modification and install a lap/shoulder belt in place of the lap-only belt. This added burden does not require any additional engineering expertise or crash testing. In the Final Regulatory Evaluation that accompanied the November 1989 final rule, NHTSA estimated that the rear seat lap/shoulder belt requirement would increase costs by \$13 for each rear outboard seating position in these vehicles. NHTSA concluded that these burdens are not excessive, and RVIA provided no information indicating either that this previous agency conclusion was wrong or that NHTSA has failed to consider some relevant information in reaching conclusion. Accordingly, RVIA's petition to amend the rear seat lap/shoulder belt requirements is denied.

RVIA also challenged NHTSA's certification that the rear seat lap/shoulder belt rule will not have a significant economic impact on a substantial number of small entities. RVIA noted that a publication identifies more than 2600 van converters in the United States. However, NHTSA's certification was based upon the fact that the rear seat lap/shoulder belt requirements will not have a significant economic impact on small entities, as explained above, regardless of the number of small entities that will be affected.

Economic and Other Impacts of This Rule

NHTSA has analyzed this notice responding to the petitions for reconsideration of the rear seat lap/shoulder belt requirements and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The exclusion of aisleway seats in passenger cars from the rear seat lap/shoulder belt requirements may result in some minor cost savings, if more vehicle manufacturers classify

their minivans as passenger cars and if those minivans are equipped with aisleway seats less than 12 inches from the inside of the vehicle. Limiting the retractor requirements to forward-facing outboard seating positions simply corrects an error in the previous final rule. The decision to address the lockability requirements in a separate rulemaking should not affect the anticipated impacts or benefits of such a requirement. Allowing the belts for rear outboard seating positions on readily removable seats to detach at the lower anchorage and granting an additional year of leadtime before those seats must be equipped with lap/shoulder belts should result in a minor cost savings for the manufacturers. Because these impacts are so minimal, NHTSA has determined that it is not necessary to prepare a full regulatory evaluation.

Additionally, the agency has analyzed the effects of this rule on small entities, in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the economic impact of this rule is insignificant.

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant effect on the human environment.

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.209 [Amended]

2. S4.1.4 of Standard No. 208 is amended by revising S4.1.4.2(b), adding a new S4.1.4.2(c), and revising S4.1.4.2.2, to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.*

* * * * *

S4.1.4.2(a) * * *

(b) Except as provided in S4.1.4.2.1 and S4.1.4.2.2, each passenger car, other

than a convertible, manufactured on or after September 1, 1990 and each convertible passenger car manufactured on or after September 1, 1991 shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

(c) As used in this section, "rear outboard designated seating position" means any "outboard designated seating position" (as that term is defined at 49 CFR 571.3) that is rearward of the front seat(s), except any designated seating position adjacent to a walkway that is located between the seat and the near side of the vehicle and is designed to allow access to more rearward seating positions.

S4.1.4.2.1 * * *

S4.1.4.2.2 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.1.4.2 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt shall not use any pushbutton action.

3. S4.2.4 of Standard No. 208 is amended by revising the introductory text and S4.2.4.3 to read as follows:

S4.2.4 *Trucks and multipurpose passenger vehicles manufactured on or after September 1, 1991 with a GVWR of 10,000 pounds or less.* Except as provided in S4.2.4.2 and S4.2.4.3, each truck and each multipurpose passenger vehicle, other than a motor home, manufactured on or after September 1, 1991 that has a gross vehicle weight rating of 10,000 pounds or less shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement

incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

S4.2.4.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.2.4 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for detaching the upper torso belt shall not use any pushbutton action.

4. S4.4.3 of Standard No. 208 is amended by revising S4.4.3.2 and S4.4.3.2.3 to read as follows:

S4.4.3 *Buses manufactured on or after September 1, 1991.*

* * * * *

S4.4.3.2 Except as provided in S4.4.3.2.2 and S4.4.3.2.3, each bus with a gross vehicle weight rating of 10,000 pounds or less, except a school bus, shall be equipped with an integral Type 2 seat belt assembly at the driver's designated seating position and at the front and every rear forward-facing outboard designated seating position, and with a Type 1 or Type 2 seat belt assembly at all other designated seating positions. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1 and S7.2 of this standard. If a Type 2 seat belt assembly installed in compliance with this requirement incorporates any webbing tension-relieving device, the vehicle owner's manual shall include the information specified in S7.4.2(b) of this standard for the tension relieving device, and the vehicle shall comply with S7.4.2(c) of this standard.

* * * * *

S4.4.3.2.3 Any rear outboard designated seating position on a readily removable seat (that is, a seat designed to be easily removed and replaced by means installed by the manufacturer for that purpose) in a vehicle manufactured on or after September 1, 1992 shall meet the requirements of S4.4.3.2 and may use an upper torso belt that detaches at either its upper or lower anchorage point, but not both anchorage points, to meet those requirements. The means for

detaching the upper torso belt shall not use any pushbutton action.

5. S7.1.1.3 of Standard No. 208 is revised to read as follows:

S7.1.1.3 A Type 1 lap belt or the lap belt portion of any Type 2 seat belt assembly installed at any forward-facing outboard designated seating position of a vehicle with a gross vehicle weight rating of 10,000 pounds or less to comply with a requirement of this standard, except walk-in van-type vehicles and school buses, shall meet the requirements of S7.1 by means of an emergency locking retractor that conforms to Standard No. 209 (49 CFR 571.209).

6. S7.1.1.5 of Standard No. 208 is removed and reserved.

Issued on July 25, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-17686 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 215

[Docket No. 900512-0192]

Subsistence Taking of North Pacific Fur Seals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final notice of harvest levels.

SUMMARY: Regulations on subsistence taking of North Pacific fur seals require the National Marine Fisheries Service (NMFS) to publish a summary of the previous year's fur seal harvest and a projection of the number of seals expected to be taken in the current year to meet the subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. NMFS published this notice on May 25, 1990. Following a 30-day public comment period and two public meetings, NMFS is publishing a final notice of expected harvest levels for 1990, as follows:

St. George Island: 181-500

St. Paul Island: 1,145-1,800

EFFECTIVE DATE: June 30, 1990.

FOR FURTHER INFORMATION CONTACT:

Dr. Steven Zimmerman, 907-586-7235 or Georgia Cranmore, 301-427-2289.

SUPPLEMENTARY INFORMATION:

I. Background

The subsistence harvest of North Pacific fur seals, *Callorhinus ursinus*, on

the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215, subpart D—Taking for Subsistence Purposes. These regulations were published under the authority of the Fur Seal Act, 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the legitimate subsistence needs of the Pribilofians using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The following subsistence harvest levels have been recorded on the Pribilof Islands since 1985:

	St. Paul Island	St. George Island	Total
1985.....	3,384	329	3,713
1986.....	1,299	124	1,423
1987.....	1,710	92	1,802
1988.....	1,145	113	1,258
1989.....	1,340	181	1,521

II. Response to Public Comments

Public meetings were held on June 7, at the request of the Humane Society of the United States and on June 18, at the request of the Aleut Community Council of St. Paul. The following organizations were represented at these meetings: American Humane Association, Humane Society of the United States, Aleut Community Council of St. Paul, International Wildlife Coalition, Tanadgusix Corporation, Traditional Council of St. George, Greenpeace, The Fund for Animals, Friends of Animals.

In addition, the following groups submitted written comments by June 25, the end of the 30-day public comment period, concerning the appropriate level of the subsistence harvest and related issues:

Humane Society of the United States, with International Wildlife Coalition and Sea Shepherd Conservation Society

Aleut Community Council, St. Paul Island

St. George Traditional Council, Friends of Animals

1. Subsistence Harvest Levels

Aleut representatives reported the results of a survey on St. Paul that indicated a need for at least 1,700 seals or 10 per household. They are asking for a subsistence harvest level of 2,500 on St. Paul and 500 on St. George.

The efficiency of the subsistence harvest and the appropriate numbers of seals needed for subsistence were the major topics of discussion at the meetings and in written comments. In the Proposed Notice of Harvest Levels (55 FR 21630, May 25, 1990), NMFS provided a table of harvest data, 1985-89, on St. Paul Island. The percent-use of the seal carcasses for subsistence was 43.5 in 1988 and 38.2 in 1989. Although the amount of seal meat harvested both years was equivalent (approx. 26,500 lbs), almost 200 more seals were killed to provide the subsistence meat in 1989.

One commenter is unconvinced that subsistence needs exist for seal meat on the Pribilof Islands because alternative food sources, especially halibut, are readily available. This commenter suggests amendment of 50 CFR part 215 to strengthen the subsistence definition. Another commenter calls on NMFS to suspend the 1990 harvest because of the wasteful manner of taking in 1989. If the 1990 harvest does proceed, this commenter asks that NMFS suspend the harvest on any day that the average percent-use falls below 60 percent.

Regulations under 50 CFR part 215 subpart D, which implement subsistence provisions of the Fur Seal Act and the MMPA, require that any subsistence killing of North Pacific fur seals be carried out in a non-wasteful manner. The regulations define wasteful manner as "any taking or method of taking which is likely to result in the killing of fur seals beyond those needed for subsistence uses or which results in the waste of a substantial portion of the fur seal" (50 CFR 215.2(h)(2)(i)).

In 1987, NMFS calculated a range of percent-use estimates to guide our subsequent determinations of non-wasteful taking. A total of 101 fur seals were weighed before and after minimum butchering (i.e., only the heart, liver, flipper, shoulder, and breast were taken). A mean 29.1 percent-use of each animal was calculated under these circumstances. An additional 83 seals were weighed before and after virtually all consumable parts of the seals had been removed (i.e., all parts except the pelt, blubber, skull, neck, and body fluids). A mean 53.3 percent-use resulted.

In our 1989 report on the 1988 subsistence harvest, NMFS determined that the 43.5 percent-use estimated for the 1988 harvest constituted substantial use consistent with the requirement in 50 CFR 215.31(b) that the taking of seals not be accomplished in a wasteful manner. However, we encouraged greater utilization because higher efficiency had been reported in 1985-86.

It should be noted that the average percent-use for the entire 1986 harvest was significantly higher than 1988 or 1989, i.e., 47.2 percent-use. Thus, in 1986, 5,100 more pounds of meat were available for consumption compared to 1989, but fewer seals were taken. Also, based on a review of daily percent-use calculations from 1985-89, much higher percent-use has been achieved, up to almost 60 percent.

Aleut representatives complained that reports of percent-use in 1989 unfairly represented their actual take because smaller animals were taken and less meat was available. They were also critical of the publication of 38.2 percent as an estimate of their harvesting efficiency since they had actually taken 38.2 out of a possible 53.3, or 71.7 percent. Using these proportions, the St. Paul harvest was 81.6 percent efficient in 1988. Neither the age nor the size of the animals taken has changed significantly since 1988. NMFS believes that the "butterfly" butchering technique, where only shoulder and breast meat is taken, was used more extensively in 1989 and is responsible for an actual decrease in percent-use between 1988 and 1989.

Based on the amount of meat used for subsistence for the last 2 years, the average weight of seals harvested and a 60 percent-use, one commenter recommended a harvest level on St. Paul of 830 seals. Alternatively, this commenter notes that subsistence needs on St. Paul can be based on the 1989 experiences on St. George Island. St. George residents took only 181 seals in 1989. If this represents their subsistence needs, and if the Aleut population on St. Paul is approximately three times St. George's population, then 543 seals should meet the subsistence needs of St. Paul, according to this commenter. NMFS believes that the 60 percent-use requirement is unreasonably high but finds merit in the comparisons between subsistence needs on St. George and estimates on St. Paul. However, there appear to be ongoing changes in the comparative Aleut populations of these islands, according to Aleut comments, and the proportion of Aleut subsistence harvesters on St. Paul and St. George Islands may no longer be 3:1. Additionally, it appears that economic conditions and availability of alternative food sources may not be the same on both islands.

2. Economic Conditions

In the notice of proposed harvest levels, we indicated that economic conditions did not appear to have changed on the Pribilofs since 1988. However, St. Paul and St. George Island

commenters said that unemployment is 90 percent this year vs. 75 percent in 1989 and that the Community Councils are no longer subsidizing the grocery stores on the islands. Money from a trust fund established by the 1983 amendments to the Fur Seal Act, and augmented in subsequent years, has apparently been exhausted on St. Paul and city workers have lost their jobs. St. Paul representatives also indicated that people have moved to St. Paul from St. George and other areas. However, they did not give a current estimate of Aleut residents. Clearly, many of the immigrants are non-Native and involved in the harbor and fishing development activities. Only Native Alaskan residents of the Pribilof Islands may participate or benefit from the subsistence harvest. St. George Island harbor development has apparently reached an impasse and only 140 residents remain on the island, according to St. George representatives at the June 18 public meeting.

One commenter charged that Filipino nationals were working on St. Paul Island this summer and asked NMFS to investigate. We understand that over 50 Filipino workers were imported to work in St. Paul's fish processing plant in 1990, presumably because local labor was not available. NMFS believes that the economic conditions on the Pribilof Islands are changing and that private development is replacing government subsidies, especially on St. Paul. However, St. George Island's development is lagging because of the lack of harbor completion.

3. Use of Subsistence Harvest By-Products

Two commenters questioned the St. Paul Island representatives' assertion that no "seal sticks" were taken last year. Seal sticks (or bacula) are possible commercial by products of the subsistence harvest that may not be traded or sold. There is a market for seal sticks in Asia as aphrodisiacs. NMFS representatives reported the widespread practice of removal of seal sticks and related organs from discarded carcasses on St. Paul Island in 1989. St. Paul Island residents will be asked to account for seal sticks removed in previous harvests, and NMFS representatives on the Pribilofs will continue to advise subsistence harvesters that these parts cannot be sold and have no known handicraft or subsistence use.

4. Changes in Subsistence Regulations

Pribilof Island representatives have asked for amendments to the subsistence rule (50 CFR part 215, subpart D) to change the start of the

harvest season from June 30 to June 15. The halibut fishing season usually starts in late June and this conflicts with the subsistence harvest since most of the harvesters are involved in halibut fishing operations, according to St. Paul Islanders. One commenter objects to this change and questions whether there is a need for seal meat under these circumstances. A number of commenters have asked each year for changes to the regulations to eliminate the option of extending the harvest season past August 8. No extensions have been granted since 1987. NMFS intends to publish a proposed rule to eliminate the extension option since its use has resulted in the taking of high numbers of female seals. In addition, we will propose a change in the harvest season since, in our view, it is not likely to result in adverse effects on population size or structure.

III. Subsistence Harvest Levels for 1990

In the May 25 proposed notice, NMFS proposed harvest levels to coincide with actual take in 1989, with the understanding that no significant changes had occurred in economic conditions that might result in greater need for seal meat in 1990. Based on a review of all comments received on this issue, NMFS believes that 1988 is a more appropriate choice on which to base the lower end of the range of harvest levels on St. Paul Island in 1990. About the same amount of meat was taken in 1988 and 1989, but in 1988 fewer seals were taken and butchered more efficiently. Thus the lower bound is set at 1,145. Since island residents have reported a need for at least 1,700 seals this year, we are setting the upper bound at 1,800 to accommodate possibly changing economic conditions.

On St. George Island there is no information on harvest efficiency and little other information on which to base harvest estimates. However, last year's harvest (181 seals) was the highest recorded since 1985 and appears to be the best choice for the lower bound of their subsistence need estimate. Since St. George Island representatives have asked for 500 seals, we will make this the upper bound of the harvest estimate. Thus, harvest levels in 1990 are set as follows:

St. George Island: 181-500
St. Paul Island: 1,145-1,800.

Once the lower bound is reached, the harvest must be suspended for up to 48 hours, under 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of island residents have been met. Criteria

on which to base a decision on whether or not to resume the harvest and allow additional taking for subsistence purposes include assessments of available information on: (1) Percent-use of seal carcasses taken to date, (2) number of subsistence users needing additional meat, (3) the number of additional seals requested, (4) disposition of previously harvested seal meat, and (5) disposition of harvest by-products.

Aleut representatives are concerned that these assessments may not be

accomplished within the 48-hour period allowed by regulation. They believe that the distance between the Pribilofs and the Washington, DC area, the difference in time zones, and the possibility that decision-makers may be away from the office, could cause delays that may result in the loss of some part of their subsistence harvest. To ensure that any decision on a new harvest estimate is reached as soon as possible, the Alaska Regional Director, with the concurrence of the Assistant Administrator, shall be responsible for making any such

determinations. Should these determinations be made and harvest estimates revised during the course of the 1990 season, this information along with the reasons for such determinations will be included in the Federal Register notice required in 50 CFR 215.32(b).

Dated: July 23, 1990.

Michael F. Tillman,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.
[FR Doc. 90-17611 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 55, No. 146

Monday, July 30, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-127PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redefinition of Pink Grapefruit as Red Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes changing the definition for varieties of grapefruit as defined in the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. All such varieties of grapefruit currently defined as "pink" would be changed to "red" as the result of this proposed action. The Citrus Administrative Committee (committee) unanimously recommended this change to make the marketing order definition conform with the definition used by the Florida Citrus Commission and to maintain standardized terminology within the Florida citrus industry.

DATES: Comments must be received by August 29, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2525-S, Washington,

DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein. Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. There are also about 25 importers of grapefruit. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A minority of these handlers and a majority of the producers and a majority of importers may be classified as small entities.

This proposed action would add a new § 905.105 to the rules and regulations under the order to redefine the definition for certain varieties of grapefruit from pink to red. Section 905.5 (7 CFR 905.5), defines the varieties of fruit regulated under the marketing

order and authorizes the addition of other varieties specified in § 905.4 (7 CFR 905.4), as recommended by the committee and approved by the Secretary. This action merely changes the name of a currently defined variety.

This proposed action would also amend § 905.306 (7 CFR 905.306) of the rules and regulations, which specifies for both domestic and export markets minimum grade and size requirements for several varieties of grapefruit grown in Florida. The entries for grapefruit in paragraph (a), Table I, and in paragraph (b), Table II, of § 905.306 would be revised to change the term "pink" to "red" to bring these provisions into conformity with the new definition.

The committee recommended this action following the Florida Citrus Commission's (commission) initiation of action to make the same change in that organization's citrus shipping manifests. The commission recommended the change in light of production shifts to the redder grapefruit varieties in Florida. This action is intended to make the marketing order definition consistent with the commission's definition, thereby standardizing the terminology and helping prevent industry and market confusion when grapefruit is referred to in marketing, cultural, and statistical materials. The marketing order and the regulations thereunder have traditionally used the same terminology as that developed by the commission to define the various varieties of Florida citrus and this action would maintain this practice.

The committee, which administers the program locally, unanimously recommended this action on January 16, 1990. The committee meets from time to time each season to review the rules and regulations effective under the marketing order. Committee meetings generally are open to the public and interested persons may express their views at these meetings. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including grapefruit, are

regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Grapefruit import requirements are specified in § 944.106 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that grapefruit imported into the United States must meet the same minimum grade and size requirements as those specified for each grapefruit variety listed in Table I of paragraph (a) in § 905.306. Since this proposed action would redefine pink grapefruit as red grapefruit under the marketing order, the proposed definition change would also apply to the grapefruit import regulation. However, no change to the import regulation is needed. An exemption provision in the grapefruit import regulation permits

persons to import up to 10 standard packed 4/5-bushel cartons exempt from the import requirements. This proposed action reflects the committee's and the Department's appraisal of the need to make the definition change for grapefruit, as hereinafter set forth. The Department's view is that this proposed action would have a beneficial impact on producers and handlers since it would maintain standardized terminology for grapefruit within the Florida citrus industry.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New § 905.105 is added to read as follows:

§ 905.105 Variety Redefinitions.

Pursuant to § 905.5(m), grapefruit varieties are redefined as follows:

(a) Marsh and other seedless grapefruit, excluding pink grapefruit, are redefined as Marsh and other seedless grapefruit, excluding red grapefruit;

(b) Duncan and other seeded grapefruit, excluding pink grapefruit, are redefined as Duncan and other seeded grapefruit, excluding red grapefruit;

(c) Pink seedless grapefruit, is redefined as red seedless grapefruit;

(d) Pink seeded grapefruit, is redefined as red seeded grapefruit.

3. The provisions of § 905.306 are amended by revising the entries for grapefruit in paragraph (a), Table I, and in paragraph (b), Table II, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Grapefruit			
Seeded, except red	On and after 12/07/81	U.S. No. 1	3 1/8
Seeded, red	On and after 12/07/81	U.S. No. 1	3 1/8
Seedless, except red	03/05/90-08/19/90	U.S. No. 2 (external) U.S. No. 2 (internal)	3 3/8
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/8
Seedless, red	01/22/90-08/19/90	U.S. No. 2 (external) U.S. No. 2 (internal)	3 3/8
	08/20/90-10/21/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/8
	On and after 10/22/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/8

(b) * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Grapefruit			
Seeded, except red	On and after 12/07/81	U.S. No. 1	3 3/8
Seeded, red	On and after 12/07/81	U.S. No. 1	3 3/8
Seedless, except red	01/22/90-08/19/90	U.S. No. 2 (external) U.S. No. 1 (internal)	3 3/8
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/8
Seedless, red	03/05/90-08/19/90	U.S. No. 2 (external) U.S. No. 2 (internal)	3 3/8
	On and after 08/20/90	Improved No. 2 (external) U.S. No. 1 (internal)	3 3/8

Dated: July 10, 1990.
 William J. Doyle,
 Deputy Director Fruit and Vegetable Division
 [FR Doc. 90-16475 Filed 7-27-90; 8:45 am]
 BILLING CODE 3710-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-90-19]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 28, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26271, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket

and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 24, 1990.
 Deborah E. Swank,
 Acting Manager, Program Management Staff,
 Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 26271.

Petitioner: James E. Bell.

Regulations Affected: 14 CFR part 43.

Description of Petition: To amend part 43 to authorize and recommend the use of modern electronic carbon monoxide detectors as a maintenance aid.

Petitioner's Reason for the Petition: The petitioner believes that there is an increasing need for more than average maintenance and repair to aircraft engine exhaust systems and ram air exhaust heating systems. Continued airworthiness of these systems is such that may now require consideration of special semi-annual inspections. The use of carbon monoxide detectors offers a positive means of determining malfunction of these systems.

[FR Doc. 90-17638 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-27-D]

Airworthiness Directives; Piper Model PA-24-260 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 Piper Model PA-24-260 airplanes, which would require installation of a manually controlled heated alternate air induction system. This proposed action was prompted by the determination that operation in icing

conditions can result in ice formations which prevents the opening of the spring-loaded alternate air door. The modification proposed herein will allow the selection of heated alternate air by the pilot during such flight operations to preclude the loss of engine power.

DATES: Comments must be received on or before October 12, 1990.

ADDRESSES: Piper Aircraft Corporation Service Bulletin (SB) 861, dated May 4, 1987, applicable to this proposed AD, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; telephone (407) 567-4366. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-27-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Will H. Trammell, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349, telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-27-AD, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Two reports have been received of ice accumulation preventing the spring-loaded induction system alternate air door from operating, which led to accidents involving Piper PA-24-260 airplanes, one in 1984 and one in 1987. It has been determined that these accidents could have been prevented if the air induction systems of these airplanes had been equipped with a manual controlled heated alternate air door. SB 861, applicable to fuel-injected Piper Model PA-24-260 airplanes with spring-loaded alternate air doors, announces the availability of a manually controlled heated alternate air door installation kit. The installation of this kit will provide manual controlled heated alternate induction air in the event of ice accumulation in induction system during operation in instrument meteorological conditions conducive to icing and thus preclude the loss of engine power.

Since the condition described is likely to exist or develop in other Piper Model PA-24-260 airplanes of the same design, the proposed AD would require compliance with SB 861 on these model airplanes.

The FAA has determined there are approximately 732 airplanes affected by the proposed AD. The cost of installing the manual control heated alternate air door installation as described in the proposed AD is estimated to be \$1200 per airplane. The total cost is estimated to be \$878,400.

In considering the individual airplane cost, this proposed AD will not have a significant financial impact on any small entities owning the affected airplanes.

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

implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety. Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Piper: Applies to Model PA-24-260 (Serial Numbers 24-3642, 24-4000 through 24-4255, 24-4257 through 24-4382, and 24-4784 through 24-4803) airplanes certificated in any category. Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent inadvertent engine stoppage while flying in weather conditions conducive to induction system icing, accomplish the following:

(a) Modify the airplane by the installation of a manually controlled heated alternate air door in the engine air induction system as specified in Piper Service Bulletin No. 861, dated May 4, 1987.

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

(c) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the

Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; telephone (407) 567-4366; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 18, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-17637 Filed 2-27-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Mandatory Review of the Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of publication of the final staff report, the presiding officer's recommended decision, and an invitation for comment on the two reports.

SUMMARY: On May 31, 1988, the Commission published in the *Federal Register* (53 FR 19864) its Notice of Proposed Rulemaking for its mandatory review of the Funeral Industry Practices trade regulation rule. The Federal Trade Commission's Presiding Officer has announced the publication of, and release to the public for comment, the Final Staff Report and the recommended decision of the Presiding Officer in this rulemaking proceeding. The Final Staff Report contains the staff's analysis of the rulemaking record and its recommendations to the Commission as to amendment of the Rule. The Presiding Officer's recommended decision is contained in his report and is based upon his findings and conclusions as to all relevant and material evidence, taking into account the Final Staff Report. Interested persons and the public are invited to submit written comments on both reports. The Commission has not reviewed or adopted either report. The Commission's final determination in the matter will be based upon the entire rulemaking record, including comments received in response to this notice.

DATES: Written comments will be received until October 15, 1990.

ADDRESSES: Written comments should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

A limited number of copies of the Presiding Officer's Report and of the Final Staff Report is available at the Public Reference Section, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Telephone: 202-326-2222.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell (Presiding Officer), 202-326-3642, or Matthew Daynard (Senior Attorney), 202-326-3291.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking published in 53 FR 19864, May 31, 1988, the Commission announced the commencement of a proceeding to review the Funeral Industry Practices trade regulation rule, 16 CFR part 453 (the Rule), and invited written comment on the proposal. Following receipt of those comments, public hearings were held. The Final Staff Report and the Presiding Officer's Report, containing his recommended decision, have now been placed on the rulemaking record (Public Record No. 215-66). During the post record comment period which will end on [August 15, 1990, the public, including persons interested in the proceeding, are invited to submit comments on both reports. Such comments should be confined to information already in the rulemaking record and submitted on 8½ by 11 inch paper. Those in excess of four pages should be accompanied by four copies.

Post record comments may include requests for review by the Commission of any rulings or other determinations made by the Presiding Officer and contain requests for an opportunity to make an oral presentation to the Commission pursuant to Commission Rule 1.13(i) (16 CFR 1.13(i)). The inclusion in comments of further evidence or factual material not presently in the rulemaking record may result in rejection of the comment as a whole.

The Commission has not yet reviewed the rulemaking record in this proceeding or determined the nature or extent of any action it may take with respect to the Rule. Any decision by the Commission in this matter will be based solely upon the contents of the rulemaking record, including the material submitted in response to this notice.

Publication of the Presiding Officer's Report and the Final Staff Report should not be interpreted as representing the

views of the Commission or of any individual Commissioner.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

Henry B. Cabell,
Presiding Officer.

[FR Doc. 90-17679 Filed 7-27-90; 8:45 am]

BILLING CODE 6750-01-W

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, but Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission"), in October 1988, adopted Commission Rule 150.3(a)(4), 17 CFR 150.3(a)(4) (1989), an exemption from speculative position limits for positions which have a common owner, but which are independently controlled, 53 FR 41563 (October 24, 1988). In adopting that exemption, the Commission indicated that, after an initial period to study the effect and operation of the rule, it would consider whether the scope of eligibility for the exemption should be broadened. The Commission is now proposing to amend the applicable rules by broadening eligibility for the exemption to commodity trading advisors, simplifying the application process, and proposing other technical modifications to the rule.

DATES: Comments must be received by September 28, 1990.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, and should make reference to "Speculative Position Limits Which Are Independently Controlled."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, [202] 254-6990.

SUPPLEMENTARY INFORMATION:

I. Background

A. Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to

average 1.03 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of the information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, and to Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503.

B. Statutory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective protection against unreasonable or unwarranted price fluctuations. See, H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). See also H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986).

In this regard, section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1), states that:

[e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, the Congress provided the Commission with the authority to "fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent this burden," 7 U.S.C. 6a(1).

As the Commission has stated previously, effective enforcement of speculative position limits is dependent, in part, on a clear understanding of what positions are to be included in determining whether the applicable limit has been breached. The Congress recognized this requirement by including within section 4a of the Act a standard for the aggregation of futures positions. In particular, section 4a(1) provides that:

[i]n determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits

upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by or the trading were done by a single person.

7 U.S.C. 6a(1).

Section 4a(1) largely has been unchanged since its enactment. However, in 1968, the Congress added the language including positions "held by" one trader for another to the aggregation standard. Public Law 90-258, section 2, 82 Stat. 26 (1968). The Senate Report accompanying the 1968 amendment stated that:

[a]ll of the changes made by this section incorporate longstanding administrative interpretations reflected in orders of the [Commodity Exchange] Commission.

S. Rep. No. 947, 90th Cong., 2 Sess. 5 (1968).¹

C. Regulatory Framework

Generally, there are three elements to the regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Undergirding this framework is the basic determination of the Commission that all contract markets must have speculative position limits and the division of responsibility for speculative position limits between the Commission and the exchanges.² Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative positions limits.³

¹ Prior to the creation of the C.F.T.C., section 4a(1) had long been the subject of interpretative statements issued by the Administrator of the Commodity Exchange Authority, the C.F.T.C.'s predecessor agency. In particular, the Commodity Exchange Commission's Order issued in 1938 placed limits on the positions which "any person may hold or control." Cited at 44 FR 33839 (June 13, 1979). See 44 FR 33840 for a discussion of interpretative statements of the Commodity Exchange Authority.

² In this regard, it should be noted that the C.F.T.C. directly administers speculative position limits for futures contracts on domestic agricultural commodities. See, 17 CFR 150.2. Commission Rule 1.61, 17 CFR 1.61, requires that for all option contracts, and for futures contracts on all other commodities, exchanges adopt and enforce speculative position limits. Exchange-set speculative position limits are approved by the C.F.T.C. under the standards in Rule 1.61 and under section 5a(12) of the Act. Section 4a(5) of the Act provides that violation of such an exchange-set limit that has been approved by the C.F.T.C., in addition to being an enforceable violation of exchange rules, is also a violation of the Act.

³ Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and in 1979 issued its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979).

Over the last several years, the Commission has been engaged in a thorough revision of its speculative position policies. In this regard, the Commission has modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)), and guidelines regarding the inclusion of exemptions from exchange-set speculative position limits in financial futures contracts for risk-management positions, 52 FR 34633 (September 14, 1987). In addition, the Commission completely revised Federal speculative position limits, adding Federal speculative position limits for soybean meal and soybean oil, and amending the structure and levels of the Federal speculative position limits, 52 FR 38914 (October 20, 1987). This complete review of speculative position limit policies culminated with the Commission's promulgation of Commission Rule 150.3(a)(4), an exemption from speculative position limits for the positions of multi-advisor commodity pools and other similar entities which use independent account controllers. See, Commission Rule 150.3, 53 FR 41563 (October 24, 1988).

D. Exemption for Commonly-Owned, but Independently Controlled, Positions

The exemption from speculative position limits for commonly-owned but independently controlled positions was undertaken in response to concerns raised by certain segments of the futures industry, such as commodity pool operators and commodity trading advisors, with regard to the application of the Commission's 1979 Aggregation Policy to such accounts, 53 FR 41565.⁴

In the 1979 Aggregation Policy, the Commission provided guidance to futures commission merchants and others regarding the aggregation of positions for participants in controlled and guided account programs.

Specifically, the 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in section 4a of the Act. The 1979 Aggregation Policy stated that FCMs control all discretionary customer accounts and accounts which are part of a customer trading program unless specified conditions indicative of the absence of control exist.

⁴ That policy provided that with respect to commodity pools: The positions held in all commodity pools operated by a commodity pool operator, other than a commodity pool operator who is an officer, partner, or employee of a futures commission merchant, shall be considered positions controlled by such commodity pool operator unless:

1. A trader other than the commodity pool operator directs trading for such commodity pool;
2. The commodity pool operator maintains only such control over trading in the commodity pool as is necessary to fulfill its duty to supervise diligently all accounts of the pool; and

Such issues were also raised before the Congress during the Commission's 1986 reauthorization.⁵ In particular, commodity pools and pension funds objected that the aggregation of such positions based upon ownership, but where actual trading control had been delegated, unnecessarily restricted their use of the futures and option markets, thereby restricting their growth.

These commenters, and others, maintained that positions should not be aggregated on the basis of common ownership where unaffiliated, independent advisors control the trading of those positions and follow different trading programs. They contended that such positions are not traded as a block and, therefore, should not unduly influence a particular market. Rather, because of the independence of the account controllers, the positions established on behalf of the common owner routinely would be spread throughout the market. Accordingly, they reasoned, the need for aggregating these accounts was lessened.

In response, the Commission determined not to amend directly its aggregation policies. Rather, in recognition of the growth of such multi-advisor commodity funds and to accommodate these changing market conditions, the Commission determined to exempt such entities, on a case-by-case basis, from speculative position limits, 53 FR 13290. The salient characteristics of the exemption adopted by the Commission included: Defined eligibility for the exemption, requirement that independent account controllers be unaffiliated, application of the exemption only to trading months outside of the spot month, case-by-case determinations, and the Commission's

³ Each trading decision of the commodity pool is determined independently of all trading decisions in other commodity pools and positions in accounts which the commodity pool operator holds, has a financial interest in, or controls.

44 FR 33846.

Unlike the relief granted to the guided accounted programs of FCMs, however, the 1979 Aggregation Policy did not relieve individual commodity pools from the requirement that they aggregate their positions, even if they used independent advisors to control their trading.

⁵ During the 1986 reauthorization of the Commission, several witnesses expressed concern that the application of speculative limits to the market positions of certain commodity pools and pension funds which used multiple trading managers who trade, independently unnecessarily restricted these entities use of the markets. See, H.R. Rep. No. 624, 99th Cong., 2d Sess. (1986) at page 43. Subsequently, petitions for rulemaking regarding the application of speculative position limits to such entities were received by the Commission from an industry trade association and an exchange. See, 53 FR 13290, 13292 (April 22, 1988).

ability to condition or withdraw the exemption in its discretion.

Eligibility for this exemption currently is limited to commodity pool operators or the operators of similar entities excluded from the definition of "pool" or "commodity pool operator" under Commission Rule 4.5 that have delegated trading authority to independent account controllers. In response to the Notice of Proposed Rulemaking, 53 FR 13290, several commenters requested that the eligibility for this exemption be broadened. Nevertheless, the Commission determined that, in light of the unprecedented nature of this exemption, caution was warranted. In particular, the Commission determined that an "initial period for study and reflection of the effect and operation of the rule is appropriate," 53 FR 41567. In this regard, the Commission reasoned that:

This will provide the Commission with a reasonable opportunity to ascertain how the exemptive procedure is operating, to study further the trading of commodity pools and others, and to determine, based upon actual experience with the rules, what, if any, additional information may be required for a broadened exemption.

Id.

Moreover, the Commission had proposed to limit further the coverage of the exemption under Commission Rule 150.3(a)(4) to independent account controllers which were, by definition, "unaffiliated," 53 FR 13295. However, in response to comments received, the exemption adopted by the Commission permits otherwise affiliated account controllers to be deemed to be unaffiliated by demonstrating that they meet specified indicia of independence.⁶

The exemption applies outside of the spot month for those contracts which have an individual-month speculative position limit. By permitting the exemption to apply in the spot month for those contracts which do not have individual-month speculative position limits, the Commission provided itself with an opportunity to study this issue based upon actual trading experience and committed itself to further analysis of whether the exemption can be granted for spot-month positions.⁷

⁶ These indicia of independence include appropriate screening procedures, separate registration and marketing, and a separate trading system, 53 FR 41568.

⁷ It should be noted that the application of the exemption to the spot month for those contracts not having an individual month level had no immediate impact on Federal speculative position limits because Commission rules uniformly provide for individual trading month limits for all such contracts.

Finally, a significant feature of Commission Rule 150.3(a)(4) is the ability of the Commission to condition the granting of these exemptions to specific contract markets, or to a specific overall level for any particular market. Accordingly, in promulgating this rule, the Commission noted that:

Were a commodity pool operator or other eligible entity to seek approval for multiple independent account controllers which cause the Commission concerns because of the potential size of the overall positions, the Commission could grant the applicant commodity pool operator an exemption for some fraction of the amount of contracts for which the exemption is being sought.

53 FR 41569.

E. Operation of the Rule

The Commission has had an opportunity, since the exemption was promulgated at the end of 1988, to observe its operation. At the time the exemption was adopted, the Commission determined to observe operation of the rule before making a final determination with regard to several of the issues noted above. In addition, the Commission undertook a market survey of trading by commodity pools during the period of December 1, 1988, to March 31, 1989. This compilation of statistical data regarding the trading by commodity pools provided the Commission with additional information for its consideration. Accordingly, the Commission has determined that it is now appropriate to address these issues.

The Commission has concluded, after administering the exemption under Commission Rule 150.3(a)(4) for over a year, that, overall, this exemption from speculative position limits has worked well. It has concluded further, however, that in light of this experience and after an initial analysis of the data with regard to trading by commodity pools, certain specific provisions of the rule could be refined to achieve greater administrative efficiency. Accordingly, as discussed below, the Commission is proposing to broaden the exemption under Commission Rule 150.3(a)(4) and to simplify the application process.

1. Experience Administering Commission Rule 150.3(a)(4)

Since its promulgation, there have been relatively few applications filed for exemptive relief under this rule. In all, approximately eleven applications were received by the Commission during this period. Of these, ten were filed by commodity pools and one was filed by a pension fund excluded from the definition of the term "pool" under Commission Rule 4.5. Despite the relatively few applications filed, the

time needed to process the applications was greater than anticipated. This was due, in part, to the lack of experience with the application procedure by both Commission staff and the applicants, the need to establish new procedures for review, and the unexpected complexity of the applications.

Of those applications filed, the majority included both affiliated and unaffiliated independent account controllers, the former significantly increasing the complexity of the review process. In several instances, however, those with affiliated account controllers ultimately chose not to demonstrate that they met the indicia of independence and should, therefore, be deemed to be unaffiliated under the rule.⁸

Several applicants did, however, choose to make the requisite demonstrations of independence of their otherwise affiliated account controllers. Commission staff carefully considered the information contained in these applications, especially with regard to the criterion of independence relating to procedures to screen traders from knowledge of the trading positions of their affiliates. Indeed, in at least one instance, the staff conducted an on-site visit to better understand, and verify the existence of, appropriate screening procedures.

Applicants have suggested that such screening procedures may have a business-related value independent of the regulatory requirements. Indeed, certain applicants have suggested that such screening procedures provide better assurance that account controllers trade according to the prescribed system and, thus, provide better accountability when measuring the relative merits and performance characteristics of a particular trading system or advisor.

In addition, this initial period for study of the exemption's operation has provided the Commission with an opportunity to reevaluate the relative need for the various types of information required in the application for exemption. In particular, the Commission has observed that certain of the documents required, such as account opening statements or powers of attorney, may not be executed until after the exemption has been granted.

⁸ It cannot be concluded from that failure, however, that such account controllers could not have met the required showing had they tried. To the contrary, because the overall levels of exemption granted by the Commission were less than the total multiple of advisors for some of the larger multi-advisor pools, these applicants may not have had an incentive to incur the extra costs of making such a demonstration.

This has necessitated a two-step process of reviewing draft documents and substituting executed ones following approval. In addition, the provision permitting Form 40s to be submitted by individual account controllers under separate cover has been administratively unwieldy. Finally, the Commission notes that the requirement for notification of subsequent changes needs further refinements.

2. Study of Trading

During this period, the Commission staff also has compiled various statistical data regarding trading by commodity pools. Commission researchers will use that data base for future study. An initial analysis of the data, however, indicates that the positions controlled by commodity trading advisors for commodity pools generally are not, as a class, of the largest magnitude. To be sure, particular commodity trading advisors or commodity pools may be active in particular futures markets, but nothing in the statistics compiled on their trading activities from December 1, 1988, to March 31, 1989, would militate against the granting of exemptions under the current rule, or the expansion of the exemption to additional categories of professional traders.

II. The Proposed Rules

A. Eligibility

The Commission is proposing to expand eligibility for the exemption to commodity trading advisors. As noted above, the Commission followed a cautious approach initially in promulgating this exemption. At that time, several commenters suggested in response to the Notice of Proposed Rulemaking that the exemption should be applicable to entities having "sophisticated institutional structures," 53 FR 41567. It appears, from the nature of the applicants, which, for example, have included one pension fund, that the exemption currently covers the type of institutional investors suggested.

Commodity trading advisors, however, were not proposed to be eligible for the exemption. Nevertheless, several commenters argued that, in certain respects, commodity trading advisors were similarly situated to commodity pool operators. In particular, they noted that commodity trading advisors are Commission registrants who trade professionally on behalf of others. These commenters further noted that a commodity trading advisor, similar to a commodity pool, may have a multi-advisor structure through, for

example, an equity ownership in a second commodity trading advisor.

These commenters also pointed out that the independent commodity trading advisors of a futures commission merchant are included under the Commission's 1979 Aggregation Policy. They reasoned that commodity trading advisors not associated with a futures commission merchant should be accorded equivalent treatment by inclusion in the exemptive relief.⁹

In light of the absence of extraordinarily large position concentrations associated with the current exemption, the lack of adverse data arising from the study of trading by commodity pools and the lack of problems associated with the relief accorded to commodity trading advisors under the 1979 Aggregation Policy, the Commission believes that an expansion of the exemption for positions which are commonly owned, but independently controlled, to include commodity trading advisors is appropriate. Accordingly, the Commission is proposing to make commodity trading advisors eligible for the exemption, reaching all those entities which trade professionally on behalf of others and which commonly may have a multi-advisor structure that separates ownership from the day-to-day control of trading.¹⁰

B. Affiliation of Account Controllers.

Commission rules currently define an independent account controller as a person "who is unaffiliated with, and trades independently of, the commodity pool operator or excluded person on whose behalf the trading is done, and of any other independent controller trading for that commodity pool operator or

⁹ Subsequent to the promulgation of the exemption, Commission staff twice has been requested to confirm that it will not recommend to the Commission any enforcement action against multi-advisor commodity trading advisors seeking to be exempted from speculative position limits. Those requests remain pending. Both of these requests are premised upon a commodity trading advisor's ownership of, or equity interest in, a second commodity trading advisor. In both cases, the requestors have stated that the commodity trading advisors trade according to separate technical systems which were developed completely independently. Both represent that they continue to maintain separate operations, are marketed to the public separately, and have in place appropriate screening procedures.

¹⁰ The Commission's inclusion in the Rule 150.3(a)(4) exemption of entities excluded from the definition of "pool or pool operator" under 17 CFR 4.5 was intended to reach those excluded entities which, in addition to pools, are commonly known to employ multi-advisor structures. The Commission is requesting comment on whether additional entities excluded by the statutory definition of "commodity trading advisor," or exempt from registration under Section 4m of the Act, employ such multi-advisor structures, and whether eligibility for the exemption needs clarification in this regard.

excluded person* * *," 17 CFR 150.1(d)(3) (1989). In adopting this requirement, the Commission stated that it:

Continues to believe that independent account controllers, in order to be exempt, should be unaffiliated with a commodity pool operator or other trading entity, and all other account controllers, including other employees of the same futures commission merchant. Such a requirement provides a bright-line test which can be applied clearly both by the Commission and by those seeking exemptions.

53 FR 41567.

Nevertheless, the Commission included a provision which permits an applicant that has an account controller who is affiliated, either with a second account controller or as an employee of a commodity pool operator, to demonstrate that sufficient indicia of independence exist to deem the account controller, for purposes of this exemption, to be unaffiliated. 53 FR 41568.

As the Commission noted above, many of the applications for exemption have included affiliated account controllers requesting to be deemed to be unaffiliated pursuant to the specified criteria. Before approving these exemptions, the Commission required the affiliated account controllers to demonstrate that they use screening procedures appropriate for maintaining the independence and confidentiality of their day-to-day trading activities, while providing for an appropriate level of supervision and oversight of their activities. And, as discussed above, applicants have noted the business use of screening procedures apart from the requirement of the rule. In this regard, no problems associated with these exemptions have come to the Commission's attention during this period.

Thus, while the Commission is proposing to expand eligibility for the exemption to commodity trading advisors, the Commission is retaining the requirement that, where independent account controllers are affiliated, they specifically demonstrate their actual independence. The indicia which would demonstrate independence by affiliated account controllers include the following three existing criteria:

1. Screening procedures. Written procedures must be in place which are designed to preclude the affiliated account controller from gaining access to, or receiving data about, the trades of others. These must include document-routing procedures and other factors intended to maintain the independence of the controller's activities. The applicant should include a description of the physical location of the affiliated account

controller as well as other security arrangements and procedures for screening the controller from information regarding both the trading strategies and individual positions of others.

2. Registration and marketing. As with unaffiliated independent account controllers, an affiliate must be registered separately from the employer, must use a separate Disclosure Document¹¹ and must market his or her trading program separately; and

3. Trading system. If requested by the Commission, the affiliated independent account controller must be able to demonstrate through a history of simulated or actual trading, that the affiliate's trading system is independent from that of the applicant or any other of the applicant's account controllers.

53 FR 41568.

In addition, the Commission is proposing a fourth criterion, that the trading system of affiliated account controllers be separately developed and independent of other trading systems. Separate development is demonstrated by reference to the autonomy of the system's originator and independence of the trading system is demonstrated by its lack of reliance on any other trading systems for its development or operation, and that its trading signals are unique. Under this proposed criterion, the applicants must describe the circumstances of the development of their respective trading systems.

For example, a commodity trading advisor could apply for an exemption from speculative position limits for an affiliate commodity trading advisor where the first commodity trading advisor purchased its interest in the affiliate subsequent to the development by the affiliate of its trading program. The separate trading systems would be separately maintained subject to appropriate screening procedures. Alternately, a commodity pool operator could seek an exemption for an employee who autonomously developed a trading system, and who met the other indicia of independence, if the system were independent of existing systems. This criterion would not be met,

¹¹ Rules 4.21 and 4.31, 17 CFR 4.21 and 4.31 (1989), respectively, require registered commodity pool operators and commodity trading advisors to disclose their past performance and the past performance of their principals. Rule 4.21 also requires registered commodity pool operators to show the past performance of their pools commodity trading advisors and their principals. Commission staff has interpreted these requirements to mean that commodity pool operators and commodity trading advisors must disclose the past performance of any advisor with which they are affiliated in their disclosure documents. The affiliated advisor similarly must disclose the past performance of the pool operator or trading advisor in directing accounts in its Disclosure Document. For the purpose of this second criterion, this disclosure required under Rules 4.21 and 4.32 would not constitute marketing.

however, where one employee developed multiple trading systems for which trading responsibility and system maintenance was then delegated to others. In that instance, there is no assurance that the trading systems which were developed by a single individual would, in fact, be independent.

The lack of affiliation remains a bright-line test in establishing the independence of account controllers. Accordingly, affiliates would still "bear a heavy burden in otherwise demonstrating their independence." 53 FR 41568, by reference to the above four indicia.

C. Required Documentation

The Commission is also proposing to reduce the amount of documentation required to be filed as part of the application for exemption. In this regard, it should be noted that under the 1979 Aggregation Policy, the Commission does not require the futures commission merchant or other trader to submit evidence that it meets the applicable standards prior to trading. Rather, the futures commission merchant must, itself, determine compliance in light of the indicia outlined in the Commission's policy statement. Indeed, the Commission noted that:

[a]lthough the Commission has decided not to require an FCM or other trader to submit evidence prior to trading, the issues raised by the commenters have assisted the Commission in developing its aggregation policy. As indicated above, the determination of control must be decided on a case-by-case basis.

44 FR 33843.

While such a regulatory framework cannot be applied in toto to the granting of exemptions under Commission Rule 150.3(a)(4), the Commission nevertheless believes that, in granting these exemptions, greater reliance can be placed on the applicant's sworn factual statements and representations that it meets the applicable criteria. In this regard, however, it should be noted that, to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will initiate vigorous, appropriate action, including rescission of exemptions which have been granted, or other appropriate legal action. Specifically, applicants should note that affidavits submitted pursuant to Commission Rule 150 constitute a "report filed with the Commission" for purposes of section 6(b) of the Act. Thus, any applicant who willfully makes

any false or misleading statement of a material fact in such an affidavit commits a violation of the Act.

Accordingly, because the required affidavits provide the basic information necessary to the Commission to make a routine determination on the application for exemption, the Commission has determined, as a general policy, to streamline the application process. In particular, the Commission is proposing to delete certain of the requirements that documentary evidence supporting the affidavit of the applicant be provided for its analysis.¹² Instead, those submitting affidavits as part of their application should assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their statement of independence in the affidavit. The Commission believes that this modification is in greater harmony with the approach it has adopted under the 1979 Aggregation Policy in determining issues of independence, and is the more appropriate placement of responsibility for assuring compliance with the Act. Moreover, the proposed changes will streamline the application process while dispensing with the sometimes unnecessary or tangential paperwork.

In particular, the Commission is proposing to delete the requirement that additional documents, such as binding powers of attorney and account opening documents, be filed. In this regard, the Commission notes that such documents may not have been prepared at the time that the exemption was sought. Rather, these documents would be completed following the granting of the exemption, before trading commenced. This required the filing of illustrative agreements followed by supplementation of applications with executed documents. The Commission believes that the requirement that these documents be furnished as a matter of course can be deleted without affecting its ability to make appropriate determinations.

Additional documents which are currently required with the application, but which the Commission is proposing to delete, include proof of registration with the Commission of each independent account controller and updated Form 40s. The Commission believes that documentary proof of registration can be deleted in order to further streamline the application. The Commission has determined, as an

¹² Of course, most, if not all, of this documentary evidence, in any event, is required elsewhere by the Commission to be maintained, or will be maintained as a routine business record.

alternative, to propose that the required affidavits include a statement that the affiant is registered with the Commission.

The requirement that Form 40s be filed with the application or under separate cover has proven to be administratively inefficient.¹³ In this regard, the Commission has noted instances where the filing of the application and the filing of Form 40s under separate cover have not been synchronous. This has created problems for Commission staff in matching Form 40s filed under separate cover with the appropriate application.

Moreover, Form 40s are currently required to be updated by the trader within ten days of a change which renders it inaccurate as filed. *See*, 17 CFR 18.04(d) (1989). The filing of updated Form 40s with this application, outside of the routine procedures for such filings, has posed additional administrative inefficiencies. Accordingly, the Commission is proposing to delete the requirement that updated Form 40s be filed as part of the application for exemption. Of course, the general rule that Form 40s routinely must be kept up to date would continue, and the granting of such an exemption may occasion the need for such a routine update.

Despite the Commission's proposal to delete from the application some of the documentary evidence supporting the affidavits, it should be noted that the Commission is retaining the provision which permits it to request any additional information, including, of course, documents which, in light of the circumstances of the application, appear necessary to demonstrate the nature of the relationship between the owner and the independent account controller, 17 CFR 150.3(b)(1)(iii)(F) (1989). The Commission is making explicit its authority in individual cases, and as appropriate to the circumstances, to request any of the documents the routine filing of which are no longer being required in the application, as well as any other documentary or other information necessary for it to evaluate the application. In general, however, the Commission intends to rely upon the affidavits required to be filed.

Currently, applications must be supplemented or updated ten days prior to changes in independent account controller, within ten days of any other

material change in the application, or within such time as specified by the Commission in a special call. In this regard, the Commission notes that the composition of independent account controllers trading for an applicant has changed more frequently than anticipated. Indeed, it appears that adjustments to the independent account controllers granted authority to trade for an applicant occurred with some regularity. Moreover, current industry practice is to terminate trading authority on relatively short notice. These two factors have implications for the requirement that applications be supplemented and updated as changes occur.

The Commission, therefore, is proposing to modify this provision by clarifying that the Commission must be notified ten days prior to the addition of independent account controllers, and within ten days following the termination of the authority of, or relationship with, independent account controllers. This is consistent with the industry practice of terminating such trading authority on less than ten-days notice. The Commission is further proposing, however, that where an applicant is adding independent account controllers, the notice include the same information required in the affidavits filed as part of the original application.

The Commission's proposal to require that information regarding the independent account controller be included in the supplementary application recognizes the fact that such changes have occurred relatively often. Accordingly, the Commission should be assured that the criteria for granting the application are met by subsequent independent account controllers. Accordingly, the requisite affidavit must be filed by independent account controllers which are subsequently added by an eligible entity. However, the Commission notes that both the current provision, and as proposed to be modified, is merely a notification requirement. Accordingly, the Commission will notify the applicant within the ten-day period if the supplementation and updating of the application is insufficient or raises concerns about the continued viability of the exemption. In the absence of such notification, the exemption remains effective and the change is effective.

D. Reporting

Finally, the Commission noted in initially proposing the exemption, that although certain additional reporting requirements eventually might be needed to monitor operation of the exemption, at the outset, such concerns

could be addressed through special call to the traders, 53 FR 13294. While the Commission has issued no such special calls to date, it has determined that modifications to the reporting requirements are necessary in order effectively to monitor the activities of those trading pursuant to such an exemption. The Commission, therefore, separately will propose to modify its reporting requirements to permit it to better monitor the trades of entities eligible for this exemption, along with other changes to the reporting rules.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these amendments might have a significant economic impact upon their activities.

B. Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including this proposed rule, is as follows:

Average Burden Hours Per Response	1.03
Number of Respondents	1.65
Frequency of Response	3.82

¹³ The current rule provides that independent account controllers may file a Form 40 under separate cover in order to permit independent account controllers to keep confidential from a commodity pool operator the identity of the account controller's other clients.

Persons wishing to comment on the information which would be required by these proposed rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Exemptions from speculative position limits, Position limits.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5)(1982).

2. Section 150.1 is proposed to be amended by redesignating paragraph (d) as paragraph (e), revising paragraph (e), and adding a new paragraph (d) to read as follows:

§ 150.1 Definitions.

As used in this part—

(d) *Eligible entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this chapter, or a commodity trading advisor:

(1) Which authorizes an independent account controller independently to control all trading decisions for positions it holds directly or indirectly, or on its behalf, but without its day-to-day direction; and

(2) Which maintains only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf.

(e) *Independent account controller* means a person—

(1) Who specifically is authorized by an eligible entity, as defined in paragraph (d) of this section, independently to control trading decisions on behalf of, but without the

day-to-day direction of, the eligible entity;

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity; and

(4) Who is registered as a futures commission merchant, introducing broker, commodity trading advisor, or an associated person of any such registrant.

§ 150.3 [Amended]

3. Section 150.3 is proposed to be amended by revising paragraphs (a)(4), (b) introductory text, (b)(1) and (b)(3)(i), (ii) and (iii) to read as follows:

(a) * * *

(4) Carried for an eligible entity in the separate account or accounts of an independent account controller which has been approved by the Commission under paragraph (b) of this section, and are not in the spot month if there is a position limit which applies to individual trading months during their expiration; Provided however, that the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(b) Application for Exemption of Independent Account Controllers. Any eligible entity who directly or indirectly holds, but does not control, positions in contract markets having speculative position limits set forth in § 150.2 of this part may file with the Commission an application for exemption from those limits for the positions controlled by an independent account controller.

(1) Filing the application. Such application shall be made to the Commission's Washington office, Attention: Division of Economic Analysis, unless otherwise directed by the Commission or its delegee, and must include the following:

(i) An affidavit, duly notarized, of the eligible entity identifying each independent account controller and stating that each named independent account controller has been delegated authority to trade the account without further specific, day-to-day direction of trading decisions, and that the applicant maintains only such minimum control as is necessary to fulfill its fiduciary responsibilities and its duty to supervise diligently the trading by the independent account controllers. If the applicant is an organization, the affidavit must be that of a partner, officer, or trustee

authorized by the organization to bind the organization;

(ii) An affidavit, duly notarized, of each independent account controller certifying that the controller is registered with the Commission, in fact exercises independent authority with respect to directing the trading of the account, does not have knowledge of trading decisions by any other account controller, and, if the independent account controller is affiliated with the eligible entity or another independent account controller trading for the eligible entity;

(A) Explaining the circumstances of the affiliation;

(B) Describing the written procedures in place to preclude such account controllers from gaining access to, or receiving data about, trades of other account controllers, including a description of document routing procedures, the physical location of such account controllers, and other procedures or security arrangements which would maintain the independence of their activities;

(C) Certifying that such trading is done pursuant to separately-developed and independent trading systems and describing the circumstances of the development of the trading systems; and

(D) certifying that such trading has been solicited by a separate Disclosure Document that meets the standards of § 4.21 of this chapter and has been separately marketed from that of the applicant.

(iii) Any additional information or documents required by the Commission which, in light of the circumstances of the application, appears necessary to demonstrate the nature of the relationship between the eligible entity and the independent account controller(s).

(3) * * *

(i) Ten days prior to additions of independent account controllers;

(ii) Within ten days of withdrawal by the eligible entity of trading authorization to an approved account controller, changes in the ownership or control of the accounts, changes in registration status of the account owners or independent account controllers, or any other material change in the application; or

(iii) Within such time as may be specified by the Commission upon special call by the Commission to the applicant.

Issued in Washington, DC, this 24th day of July, 1990, by the Commodity Futures Trading Commission.

Sean A. Webb,

Secretary of the Commission.

[FR Doc. 90-17597 Filed 07-27-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-12-89]

RIN 1545-AN38

Like-Kind Exchanges; Additional Rules for Exchanges of Personal Property and for Exchanges of Multiple Properties

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to correction of notice of proposed rulemaking.

SUMMARY: This document contains a correction to the correction to the notice of proposed rulemaking concerning like-kind exchanges (relating to amendments and additions under section 1031 of the Internal Revenue Code of 1986, as amended).

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III, at 202-377-9581 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (55 FR 17635, April 26, 1990) provided rules for determining the applicability of section 1031 in an exchange of personal property, as well as rules for determining gain recognized, and the basis of property received in an exchange of multiple properties under section 1031. In addition, the treatment of liabilities incurred by the taxpayer in anticipation of an exchange under section 1031 was clarified. On May 31, 1990, a correction notice was published in the *Federal Register* at 55 FR 22036 which, in providing a correction to the "DATES" portion of the preamble to the proposed regulation, erroneously omitted certain language on the applicability of the regulation.

Need for Correction

Accordingly, the publication of the correction to the notice of proposed rulemaking which was the subject of FR Doc. 90-12512, published May 31, 1990, is corrected as follows:

Par. 1. On page 22036, column 1, instructional paragraph 1, the correction to the "DATES" portion of the preamble

should read, "These proposed regulations are proposed to be effective for exchanges occurring after the date of publication of the final regulations in the *Federal Register*. Written comments and requests for a public hearing must be received by July 25, 1990."

Dale D. Goode,

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

[FR Doc. 90-17592 Filed 7-27-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 90-12]

Drawbridge Operation Regulations; Columbia River, Oregon and Washington

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the State of Oregon Department of Transportation (ORDOT), the Coast Guard is considering a change to the regulations governing the Interstate 5 (I-5) highway bridge across the Columbia River, mile 106.5, between Portland, Oregon and Vancouver, Washington, by requiring that two hour's advance notice be given for openings during conditions of lower water levels. This proposal is being made to achieve operating efficiency by allowing the bridge to be staffed on a 24 hour basis by only one employee per shift. This action should relieve the bridge owner of the burden of having persons constantly available to open the draws and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before September 13, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments,

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

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

Existing operating regulations require the draw to open on signal at all times; except that it need not open from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m. Monday through Friday except federal holidays. The bridge is equipped with an alternate fixed navigation span that can accommodate the majority of vessels using the waterway during periods of lower water levels. Recently, while the bridge was undergoing rehabilitation, a temporary departure from the regulations allowed a two hour advance notice for openings. Based upon experience gained during this temporary departure, the bridge owner has requested that the two hour advance notice be made permanent. Data submitted by the bridge owner indicated that during the period of the temporary departure there were an average of five bridge openings per month, with most vessels using the alternate fixed span channel. If approved, the bridge would have one employee on duty on a 24 hour, 365 days a year basis. With a two hour advance request for an opening, additional personnel would be dispatched to assist with the requested opening. When the water level reaches 10 feet, but is less than 12 feet, the draw would open on signal if at least one hour's advance notice was given. When the water level is 12 feet, or greater, the draw would open on signal. This action should relieve the bridge owner from the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Commercial vessels presently request openings in advance, by radio, or use the alternate channel through the fixed span. This proposal would create no significant change in these existing operations. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46.

2. Section 117.869 (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draw of the Interstate 5 bridge, mile 106.5, between Vancouver, Washington and Portland, Oregon, shall open on signal if at least two hours notice is given. When the water level reaches 10 feet, but does not exceed 12 feet, the draw will open on signal if at least one hour notice is given. When the water level is 12 feet or greater, the draw will open on signal without advance notice. From 6:30 a.m. to 8 a.m. and 3:30 p.m. to 6 p.m., Monday through Friday except Federal Holidays, the draw need not open for the passage of vessels.

* * * * *

Dated: July 19, 1990.

R.K. Peschel,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 90-17624 Filed 07-27-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning

RIN 0596-AB14; 0596-AA50

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Forest Service is revising its schedule for review of its land and resource management planning rules at 36 CFR part 219 and gives notice of its intent to promulgate proposed revisions of the entire part this fall. These rules set forth the procedures and resource standards that guide development and approval of National Forest land and resource management plans as required by the National Forest Management Act of 1976.

FOR FURTHER INFORMATION CONTACT: Larry Larson, Land Management Planning Staff, Forest Service, USDA 202-447-6697.

SUPPLEMENTARY INFORMATION: In the Department of Agriculture Semiannual Regulatory Agenda published in the April 23, 1990, *Federal Register*, Vol. 55, No. 78, the Forest Service gave notice that it was undertaking a review of its rules at 36 CFR part 219. The agency planned to conduct review of the rules over a six-month period, at the end of which time it would determine if and how the planning rules should be revised.

In addition, the Forest Service gave notice in the Semiannual Regulatory Agenda that, notwithstanding the planned review of part 219, it was undertaking rulemaking to revise implementation and revision of forest plan requirements at 36 CFR 219.10 (55 FR 15979, entry No. 264). The proposed rulemaking would have sought to simplify the revision process and clarify some public concerns identified.

However, as the agency began its review of part 219, it became clear that it would be difficult to limit the immediately required changes to only § 219.10. This approach would be too

limited in scope to be able to adequately address the issues confronting the Forest Service in management of National Forest System lands. Therefore, the agency is withdrawing its plans to issue proposed rulemaking for only § 219.10.

Further, the Critique of the Land Management Planning process, which was initiated in March 1989, 54 FR 18316, was completed in May 1990. The Critique was conducted by the Forest Service with the help of The Conservation Foundation and Purdue University, Department of Forestry and Natural Resources. The purpose of the Critique was to document what has been learned in NFMA planning and to determine how best to respond to the planning challenges of the future.

Approximately 100 people were involved in conducting the Critique. They relied heavily on interviews and workshops with over 2,000 people who participated in or had responsibilities for conducting planning. These people represented a broad cross-section of all those who were involved in planning, including Forest Supervisors, Regional Foresters, planners, members of interdisciplinary teams, local citizens, elected officials from local governments, Indian tribes, interest groups representing a broad range of interests, and representatives of other agencies. Written comments from an additional 1,500 interested people were received. As a result of the Critique, 232 recommendations were developed on areas needing adjustment in the planning process.

In examining the data and recommendations from the Critique, the agency finds there is sufficient information from the Critique and Forest Service experience to proceed with rulemaking and that further review would be superfluous.

Therefore, the Forest Service gives notice that it has completed review of 36 CFR part 219 and intends to proceed with proposed comprehensive revision of 36 CFR part 219 based on the Critique's findings and Forest Service experience. The agency anticipates publishing a proposed rule sometime this fall.

Dated: July 20, 1990.

George M. Leonard,
Associate Chief.

[FR Doc. 90-17664 Filed 7-27-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****46 CFR Parts 35 and 160**

[CGD 86-036]

RIN 2115-AC30

Updating Approval and Carriage Requirements for Breathing Apparatus and Gas Masks**AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the approval specification for breathing apparatus and gas masks required aboard merchant vessels and upgrade the requirement that fresh air breathing apparatus be carried aboard tank vessels. The current regulations cite outdated agencies and approval schedules and allow the carriage of obsolete equipment. The updated regulations will reflect current practice and remove unsuitable equipment from merchant vessels.

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

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 86-036), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3314 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Mark G. VanHaverbeke, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection, (G-MVI), (202) 267-1181.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this rulemaking by submitting written suggestions or data. Persons submitting comments should include their name and address, identify this rulemaking (CGD 86-036) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of

comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period before taking final action on this proposal. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Mark G. VanHaverbeke, Project Manager, and Lieutenant Commander Don M. Wrye, Project Attorney, Office of Chief Counsel.

Background and Purpose

Subchapters D, H, I, I-A, R, and U of title 46 of the Code of Federal Regulations (CFR) require the carriage of Coast Guard approved breathing apparatus as part of the required fireman's or emergency outfits. Subchapters H, I, R, and U also require the carriage of a suitable gas mask for protection from refrigerants used on board in quantities of more than twenty cubic feet. The Coast Guard does not completely test the breathing apparatus it approves for merchant vessel application, but relies instead on the respirator testing and certification programs conducted by other governmental agencies. From the equipment so tested and certificated by other agencies, the Coast Guard then selects specific types of equipment deemed suitable for use aboard merchant vessels.

The Coast Guard approval specification for respirators, 46 CFR 160.011, is obsolete since it requires approval by the U.S. Bureau of Mines in accordance with Bureau of Mines' Test Schedules as a prerequisite for obtaining U.S. Coast Guard approval. The Bureau of Mines no longer performs this function.

The Bureau of Mines, U.S. Department of the Interior, tested respirators from 1919 to 1972. Beginning in 1972, there were a series of changes in the governmental agencies responsible for the testing and certification of respiratory equipment, until in 1978 respirator approvals were jointly issued by the Mine Safety Health Administration (MSHA) of the Department of Labor, and the National

Institute for Occupational Safety and Health (NIOSH) of the Department of Health, Education and Welfare (now Health and Human Services). MSHA/NIOSH established revised approval requirements in 30 CFR part 11 and set expiration dates for most of the Bureau of Mines approved equipment.

Therefore, 46 CFR 160.011 needs to be updated to reflect MSHA/NIOSH as the current respirator testing and certification agencies. An update of the equipment requirements is also planned to reflect current MSHA/NIOSH specifications and present industry safety standards.

It is generally recognized in the shoreside fire fighting industry that only pressure-demand or other positive-pressure, self-contained breathing apparatus (SCBA) should be worn by firefighters performing interior structural fire fighting. This high level of protection is necessary because the smoke generated by a fire contains unknown varieties and quantities of toxic materials. Therefore, this notice proposes to require that only pressure-demand or other positive-pressure SCBA be approved for carriage aboard merchant vessels.

The regulations for tank vessels in 46 CFR 35.30-20 are obsolete in that they specify the carriage of approved fresh air breathing apparatus (hose masks). For this type of breathing apparatus, air is supplied to the face mask from a hand or motor operated air blower through a long, large diameter hose. Hose masks had been approved by the Bureau of Mines for many years as being suitable for use in hazardous atmospheres.

Although originally issuing such approvals, MSHA/NIOSH, the successors to the Bureau of Mines, no longer approve fresh air breathing apparatus for use in hazardous atmospheres which are immediately dangerous to life or health, such as cargo tanks of tank vessels. This is based on the concern that under low air flow condition, a negative pressure could occur in the face mask during inhalation, permitting hazardous vapors to enter if a leak occurred. Since cargo tank entry is one of the intended applications for this equipment on tank vessels, and since Coast Guard approval is based upon MSHA/NIOSH testing and evaluation, the Coast Guard also terminated type approval of this equipment. This resulted in an inconsistency in the regulations, specifically a carriage requirement for equipment which was no longer available with the appropriate approvals.

Navigation and Vessel Inspection Circular No. 13-80 was issued to advise Coast Guard personnel and the shipping industry that the Coast Guard would accept approved SCBA of the pressure-demand type as a suitable substitute to satisfy the carriage requirements, in 46 CFR 33.30-20, for fresh air breathing apparatus. The Circular was intended to provide interim guidance while preparations for revision of the applicable regulations were being made.

Gas masks are required to be carried aboard merchant vessels to protect against the specific refrigerant used by that vessel. The approval standards for gas masks have not significantly changed under the current MSHA/NIOSH approval requirements found in 40 CFR part 11, subpart I. This notice proposes to update the approval specification found in 46 CFR 160.011. Replacement of gas masks aboard existing vessels will not be required by this proposal.

E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The cost of a new self-contained breathing apparatus, including a spare charge, was quoted by one major equipment manufacturer as \$2000. However, the information available to the Coast Guard indicates that the number of fresh air breathing apparatus and self-contained breathing apparatus that would have to be replaced by new approved self-contained breathing apparatus under this equipment manufacturer as \$2000. However, the information available to the Coast Guard indicates that the number of fresh air breathing apparatus and self-contained breathing apparatus that would have to be replaced by new approved self-contained breathing apparatus under this rulemaking is limited. Therefore, the cost of this rulemaking to industry will be minimal and the Coast Guard considers a full regulatory evaluation to be unnecessary. Because it expects the impact to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Coast Guard specifically solicits comments on the anticipated impact of this rulemaking on individual vessel owners and operators.

Environmental Impact

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

Paperwork Reduction Act

This proposal contains collection of information requirements in §§ 160.011-7 and 160.011-9. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Persons submitting comments on the information requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES."

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

46 CFR Part 35

Cargo vessels, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 160

Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 46, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 35—[AMENDED]

1. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

2. Section 35.30-20 is amended by revising paragraph (c)(1), removing paragraph (c)(2), and redesignating paragraphs (c)(3) through (c)(7) as paragraphs (c)(2) through (c)(6), respectively, to read as follows:

§ 35.30-20 Emergency equipment—TB/ALL.

* * * * *

(c) * * *

(1) One approved self-contained breathing apparatus including belt and lifeline.

* * * * *

3. Section 35.40-20 is revised to read as follows:

§ 35.40-20 Emergency equipment—TB/ALL.

Lockers or spaces where emergency equipment is stowed must be marked: "EMERGENCY EQUIPMENT" or "SELF-CONTAINED BREATHING APPARATUS", as appropriate.

PART 160—[AMENDED]

4. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.49.

5. Subpart 160.011 is revised to read as follows:

Subpart 160.011—Self-Contained Breathing Apparatus and Gas Masks

Sec.

160.011-1 Scope.
160.011-3 Construction.
160.011-5 Markings.
160.011-7 Procedure for approval.
160.011-9 Prior approvals.

Subpart 160.011—Self-Contained Breathing Apparatus and Gas Masks

§ 160.011-1 Scope.

This subpart applies to self-contained breathing apparatus and gas masks as specified by this chapter for use aboard merchant vessels.

§ 160.011-3 Construction.

(a) Self-contained breathing apparatus and gas masks must be certified by the Mine Safety and Health Administration/National Institute for Occupational Safety and Health (MSHA/NIOSH) as meeting the materials, construction, workmanship, and performance requirements of 30 CFR part 11, subpart H or I, as appropriate.

(b) In addition to the requirements of paragraph (a) of this section, self-contained breathing apparatus must:

(1) Be of the pressure-demand or positive-pressure type;
(2) Be equipped with a full facepiece or hood; and

(3) Have a MSHA/NIOSH minimum service life rating of at least 30 minutes.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, the Coast Guard considers the following

factors for self-contained breathing apparatus and gas masks to determine suitability for use aboard merchant vessels:

(1) The kind of protection afforded by the device against the kind of hazards expected;

(2) The potential for contact with combustible vapors; and

(3) The bulk and weight of the device in relation to shipboard conditions of limited space and arrangements.

§ 160.011-5 Markings.

(a) Self-contained breathing apparatus and gas masks must be marked in accordance with 30 CFR part 11, subpart D.

(b) In addition to the requirements of paragraph (a) of this section, self-contained breathing apparatus and gas masks must be permanently and legibly marked with their Coast Guard approval number.

§ 160.011-7 Procedure for approval.

(a) Self-contained breathing apparatus and gas masks are approved for use aboard merchant vessels by the Commandant (G-MVI-3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

(b) To apply for approval of a self-contained breathing apparatus or gas mask for use aboard merchant vessels, the applicant must:

(1) Submit two copies of the MSHA/NIOSH approval letter, the arrangement plan (parts drawings are not required), and the approval label authorized by MSHA/NIOSH to the Commandant (G-MVI-3) for determination as to suitability for use aboard merchant vessels; and

(2) If directed by the Commandant (G-MVI-3), submit one complete sample and one recharge (where used) for examination and testing with respect to its suitability for use aboard merchant vessels.

§ 160.011-9 Prior approvals.

(a) A self-contained breathing apparatus or supplied-air respirator previously approved under this subpart but for which approval has been withdrawn or terminated may continue to be used as required equipment aboard merchant vessels in lieu of approved self-contained breathing apparatus until (3 years after effective date of final rule) provided that the self-contained breathing apparatus or supplied-air respirator:

(1) Was part of the vessel's equipment on (effective date of final rule), and

(2) Is in serviceable condition.

(b) A gas mask previously approved under this subpart but for which

approval has been withdrawn or terminated may continue to be used for entry into refrigerated spaces for as long as it is in serviceable condition.

Dated: June 26, 1990.

J.D. Sipes,

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

[FR Doc. 90-17625 Filed 07-27-90; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-08; Notice 71]

RIN 2127-AD39

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA). DOT,

ACTION: Notice of proposed rulemaking; response to petitions for reconsideration.

SUMMARY: In November 1989, this agency published a final rule establishing new requirements for the installation of lap/shoulder safety belts in all forward-facing rear outboard seating positions in convertible passenger cars, light trucks and multipurpose passenger vehicles (e.g., passenger vans and utility vehicles), and small buses. Among the requirements set forth in that rule was a requirement that the lap belt portion of a lap/shoulder belt shall provide some means, other than an external device that requires manual attachment or activation, that will prevent any further webbing from spooling out until that means is released or deactivated. Throughout the remainder of this preamble, this requirement is identified as the "lockability requirement." The purpose of the lockability requirement is to ensure that safety belt systems are both comfortable for adult users and capable of tightly securing child safety seats.

Many petitioners for reconsideration objected to the means chosen to accomplish the purpose underlying the lockability requirement. Specifically, these petitioners asserted that they had not received notice of and an opportunity to comment on the lockability requirement before it was adopted as a final rule. Additionally, these petitioners argued that the lockability requirement was not "objective," because it did not specify any procedures to be used for

determining compliance. In response to these concerns, NHTSA has removed the lockability requirement from the rear seat lap/shoulder belt rule in a notice published elsewhere in today's edition of the *Federal Register*.

This notice proposes a lockability requirement for safety belts installed at the center and right front seating positions and at any rear seating position in any vehicle with a gross vehicle weight rating of 10,000 pounds or less. This notice puts the public on express notice of NHTSA's intent to incorporate a lockability requirement, and allows the public an opportunity to comment on the proposed requirement. Further, this proposed requirement includes a procedure for objectively determining compliance with the lockability requirement. Finally, this proposal allows an additional year of leadtime (until September 1, 1992) before the lockability requirement would take effect. This additional leadtime was requested in many petitions for reconsideration. NHTSA hopes that this proposal will focus the public's attention on the underlying purposes of the lockability requirement.

DATES: Comments on this proposal must be received by NHTSA no later than September 13, 1990. If adopted in a final rule, these proposed requirements would apply to vehicles manufactured on or after September 1, 1992.

ADDRESS: Comments should refer to Docket No. 87-08; Notice 7, and be submitted to: Docket Section, Room 5109, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. The docket section is open to the public from 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Occupant Protection Group, NRM-12, Room 5320, NHTSA, 400 Seventh Street S.W., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366-4911.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 1988 (53 FR 47982), NHTSA published a notice of proposed rulemaking (NPRM) proposing to require rear seat lap/shoulder belts to be installed in certain new vehicles. Specifically, this NPRM proposed requirements for passenger cars, light trucks, light multipurpose passenger vehicles (MPVs), and small buses to be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. Additionally, the NPRM proposed that these rear seat lap/shoulder belts be equipped with a

particular type of retractor, that such belts be integral (*i.e.*, the shoulder belt could not be detachable from the lap belt), and that such belts comply with some of the comfort and convenience requirements in Standard No. 208, *Occupant Crash Protection* (49 CFR § 571.208).

The agency received more than 70 comments on this NPRM. The issue of whether passenger cars other than convertibles should be equipped with rear seat lap/shoulder belts was relatively straightforward and noncontroversial. The consensus of the commenters was that such a requirement would be appropriate. Hence, to ensure the earliest possible implementation of such a requirement, NHTSA published a final rule on June 14, 1989 (54 FR 25275). That rule addressed only passenger cars other than convertibles, and required that all such vehicles manufactured on or after December 11, 1989 be equipped with rear seat lap/shoulder belts. That rule also expressly deferred resolution of all of the other issues proposed in the NPRM until a later date. On November 2, 1989, NHTSA published a final rule addressing the other issues raised in the NPRM, including the other vehicle types required to have rear seat lap/shoulder belts, the types of retractors with which those safety belts should be equipped, and the other performance attributes that should be required for those safety belts (54 FR 46257).

The agency received 14 petitions for reconsideration of that final rule. All issues raised in those petitions, except the lockability requirement, are resolved in a final rule responding to the petitions that appears elsewhere in today's edition of the *Federal Register*. That response to the petitions deletes the lockability requirement from Standard No. 208, but indicates that NHTSA has proposed to re-establish the lockability requirement in a separate notice. This is the proposal to which that rule refers.

The lockability requirement in the November 2, 1989 final rule evolved from NHTSA's conclusion that the low-speed movement of child safety seats held by safety belts that use an emergency locking retractor (ELR) seems to have given rise to questions and concerns about the safety and effectiveness of child seats when used with such belts. Parents of small children have expressed concerns that child safety seats move on car seats during relatively routine driving maneuvers. They have voiced this concern via NHTSA's Hotline telephone service, generally reporting dissatisfaction that they are unable to

adjust the safety belt webbing to keep the child safety seat stationary. This rulemaking is intended to help dispel this reported dissatisfaction and restore confidence in the safety and effectiveness of child restraints. Since the NPRM had proposed to require the installation of ELRs on rear seat lap/shoulder belts, the questions and concerns about the safety and effectiveness of child seats might now extend to the rear seat lap/shoulder belts required in all new vehicles. Therefore, the November 1989 final rule stated:

Even if these questions and concerns have not been substantiated, the public may not be as likely to use child safety seats if there are perceived questions about the effectiveness of those seats. NHTSA has concluded that it is appropriate to take action to remove those perceived questions, so as to maintain public trust and confidence in the efficacy of child seats. 54 FR 46262; November 2, 1989.

To implement this conclusion, NHTSA devised an approach in the November 1989 final rule intended to both ensure comfort for adult occupants of safety belt systems and tight securing of child safety seats by those same safety belt systems. This approach adopted a requirement that any lap belt or lap belt portion of a lap/shoulder belt be equipped with an ELR (to ensure comfort for adult occupants) and a new requirement that safety belts that incorporate an ELR in the lap belt or lap belt portion of a lap/shoulder belt shall provide some means, other than an external device that requires manual attachment or activation, that will prevent any further webbing from spooling out until that means is released or deactivated (to allow those safety belt systems to tightly secure child seats).

All but one of the fourteen petitioners for reconsideration objected to this new lockability requirement in Standard No. 208. There were two primary objections to this requirement. First, the petitioners asserted that the NPRM had not given the public notice or opportunity to comment on such a requirement. Hence, according to this argument, the adoption of such a requirement in the final rule violated the informal rulemaking provisions set forth in the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Second, the petitioners asserted that the absence of any procedures for determining compliance with this requirement meant that the requirement was not stated in objective terms, as required by the National

Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*).

NHTSA has again tentatively concluded that it is necessary and appropriate for Standard No. 208 to include a requirement to ensure that safety belt systems are both comfortable for adult users and can tightly secure child safety seats. In the November 2, 1989 final rule, the agency sought to achieve this purpose by means of the lockability requirement. The petitioners for reconsideration did not address the need for and validity of the agency's underlying purpose. Instead, the petitioners focused exclusively on the means chosen to accomplish that purpose.

NHTSA wants to focus attention on the purpose underlying the lockability requirement in Standard No. 208. To do so, the rule published elsewhere in today's edition of the *Federal Register* removes the lockability requirement from Standard No. 208. This notice proposes to adopt a new lockability requirement in Standard No. 208.

This proposal would be limited to vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The agency has tentatively concluded that there is less need to be able to secure child safety seats in these larger vehicles, because these larger vehicles are much less frequently used to transport children in child safety seats. NHTSA invites the public to comment on this tentative decision. NHTSA is particularly interested in any available data on this subject, and any arguments about why a final rule on lockability should or should not be limited to vehicles with a GVWR of 10,000 pounds or less.

The proposed compliance test is a simple, in-vehicle procedure to demonstrate that webbing spoolout will not affect the safety belt system's capability of providing stable child restraint support during normal driving operations. The proposed test would begin by extending the webbing to 100 percent of its length. Full extension of the webbing would cause any convertible retractor to switch so that it functions as an automatic locking retractor (ALR). Until full extension of the webbing, convertible retractors function as ELRs. After full extension, the webbing would be allowed to retract until it was at 85 percent of its length. At this extension, the seat belt assembly would be buckled. Allowing the webbing to be retracted after full extension would help ensure that the webbing is reasonably compact on the retractor reel at the start of the lockability test.

After the belt is buckled, the position of the webbing at the retractor would be recorded. Then a load of 50 pounds would be applied to the center of the lap belt or lap belt portion of a lap/shoulder belt in a horizontal direction, pulling toward the front of the vehicle. This 50 pound load was chosen to simulate the pulling forces a child in a child restraint would exert on the safety belt.

Assuming that a child in a safety seat could weigh as much as 50 pounds and that the safety seat could weigh as much as 20 pounds, NHTSA has tentatively concluded that a safety belt should be able to withstand a pull of 50 pounds without moving to ensure that the child safety seat will remain stationary during routine driving. This tentative conclusion is based on the fact that emergency locking retractors lock up at a deceleration value of 0.7g. At this level of deceleration, the inertia force needed to restrain a child seated in a child safety seat (50 pounds plus 20 pounds, or 70 pounds) would be 0.7 times 70, or approximately 50 pounds. The load would be applied at an elevation between 1 and 4 inches above the highest point on the seat cushion. This elevation appears representative of the elevation at which a child restraint secured by the belt system would be pulled by an active child seated in the child restraint. The proposed elevation range of between 1 and 4 inches should also allow sufficient room for the various types of equipment that might be used to test compliance with the lockability requirement.

When the 50 pound force level is reached, the position of the webbing at the retractor would again be recorded. The difference between the recorded positions of the webbing before and after the 50 pound force is applied could not exceed one inch. NHTSA is proposing to allow this extent of webbing movement out of the retractor in response to a point raised in Ford's petition for reconsideration of the November 1989 final rule. Ford asserted that a prohibition on any webbing spool-out was unnecessarily restrictive, because a small amount of webbing spool-out would not adversely affect child restraint stability. The agency did not intend that webbing spool-out should be zero, an engineering task of obvious difficulty. Instead, the agency wants to establish a regulatory requirement that would ensure that child restraint systems would be securely held in place during normal driving. The proposed one inch limit represents the agency's best engineering judgment, because zero spool-out would be difficult to achieve practicably, while

spool out greater than one inch may not eliminate the public's perception of too much movement. The agency tentatively concludes that the proposed one inch limit on webbing movement would not prevent child restraints from being adequately secured, and that it will allow vehicle manufacturers greater flexibility in determining how best to achieve compliance in each of their vehicles. Comments are specifically requested on the appropriateness of the proposed one inch limit.

Additionally, many petitioners for reconsideration of the November 1989 final rule asserted that the only means of complying with that lockability requirement was to use convertible retractors. These assertions were apparently based on the language in the previous lockability requirement that ELRs had to be lockable by means "other than an external device that requires manual attachment or activation." NHTSA intended that this language clearly and unequivocally preclude the use of locking clips as the means of compliance with the lockability requirement. However, the agency did not intend to preclude the use of devices such as the following to comply with the lockability requirement:

1. A convertible retractor,
2. A locking latchplate,
3. A pushbutton on the ELR to convert the retractor to an ALR or to lock the webbing at that position,
4. An electrically operated ELR that locks on signal from a "child restraint switch" located on the instrument panel,
5. A "web grabber" or "web clamp" activated by a pushbutton or some other mechanical or electrical means to lock the webbing, and
6. Any other mechanical or electrical device that complies with the lockability requirement without any action by the vehicle user to attach the device to the safety belt webbing, retractor, or any other part of the vehicle.

To more accurately express the above-described intent, this notice proposes to restate the prohibition of certain types of external devices as a means of achieving lockability. In place of the previous language, this notice proposes to require that safety belt systems with ELRs comply with the lockability requirement by means "other than a device that must be attached by the vehicle user to the safety belt webbing retractor, or any other part of the vehicle." This proposed lockability requirement could be satisfied by devices that are already in place in the vehicle (e.g., on the webbing, retractor, or instrument panel) and that must be activated by the vehicle user to lock the

webbing. For a safety belt assembly that depends on the vehicle user to activate a device to comply with this proposed lockability requirement, this notice proposes to require the vehicle owner's manual to include a step-by-step procedure, with a diagram or diagrams, showing how to activate the lockability feature. Disclosing this information directly to consumers via the owner's manual would help ensure that vehicle users have access to the necessary explanation of how to activate the lockability feature.

Several petitioners for reconsideration of the previous lockability requirement objected to the scope of that previous requirement. The previous requirement applied to any seating position, other than the driver's seat, that incorporated an ELR for the lap belt. Petitioners objected that this rulemaking action had previously focused solely on requirements for rear seating positions. Accordingly, the petitioners asserted that there was no basis for expanding the lockability requirement to apply to both front and rear seating positions.

NHTSA agrees that the rear seat lap/shoulder belt rulemaking action addressed only rear seating positions. However, the agency has tentatively decided that this rulemaking action should not be limited to only rear seating positions. A lockability requirement would appear equally appropriate for safety belts at any seating position in which a child restraint system could be installed. Hence, this proposal covers safety belts at all front and rear seating positions, except for safety belts installed for the driver's seating position.

In response to requests by many of the petitioners for reconsideration for additional leadtime before the lockability requirement becomes effective, NHTSA has carefully reexamined the leadtime for the lockability requirement. These petitioners argued that the lockability requirement set forth in the November 1989 final rule would necessitate changes to each model produced by a manufacturer. It was suggested that such changes might be needed not just for the safety belt system and retractor in question, but also to the internal trim and other interior parts, possibly extending to a relocation of the anchorages for the safety belts. According to these petitioners, the need for design studies by the manufacturers and the number of changes that would be needed made it unlikely that manufacturers could comply with the lockability requirement by September 1, 1991. The additional leadtime requested

by the petitioners ranged from one year (until September 1, 1992), requested by Honda, to four years (until September 1, 1995), requested by Toyota.

As a result of its reexamination of the leadtime needed to comply with the lockability requirement, the agency is proposing an additional year of leadtime from the September 1, 1991 date set forth in the November 1989 final rule. Thus, all seating positions (other than the driver's seating position) with an ELR for the lap belt or the lap belt portion of a lap/shoulder belt would have to comply with this lockability requirement in vehicles manufactured on or after September 1, 1992. The agency has tentatively determined that the request for one additional year of leadtime appears technically justifiable in consideration of the tasks associated with this proposed lockability requirement. The requests for more than one year of additional leadtime before the lockability requirement takes effect were either based on aspects of the previous lockability requirement that are not repeated in this proposal or were not substantiated in the petitions.

Economic and Other Impacts of This Rule

NHTSA has analyzed this proposed lockability requirement and determined that, if it were adopted as a final rule, it would neither be "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency estimates the retail price equivalent increase of installing safety belt systems that comply with the proposed lockability requirement would range from \$0.75 to \$1.50 for each seating position that must be modified. This estimate is based upon the use of the most inexpensive, currently-available means of achieving lockability (anti-transfer rings or locking latch plate designs for the safety belts). The agency specifically requests comments on the cost of compliance for individual vehicle models.

The weight increases associated with this proposed lockability requirement would be minimal. NHTSA estimates that anti-transfer rings or locking latch plate designs would not add more than two ounces of weight to each occupant position at which they were installed.

Based on a survey of 100 1989 model year passenger cars, light trucks, and vans, NHTSA estimates that approximately 28 percent of front passenger outboard seating positions and 44 percent of rear outboard seating positions already meet this proposed lockability requirement or would not be

subject to it. Additionally, the driver's seating position would not be subject to the proposed lockability requirement, nor would center seating positions that incorporate either an automatic locking retractor or a manual adjusting device. Accordingly, the agency estimates that the sales weighted, average long-term retail price increases of motor vehicles attributable to this proposed lockability requirement would range between \$20 and \$40 million annually.

NHTSA invites the public to comment on this estimate. Commenters are specifically asked to provide information about the cost impacts of this proposed lockability requirement on both current and planned future designs of safety belts. The agency asks that these estimated cost impacts be expressed as incremental long-term, sales weighted retail price equivalent estimates. Such estimates will be most useful to the agency if they include:

- a. The estimated annual volume for each of the model lines of each vehicle type produced by the manufacturer (passenger car, light truck, MPV, and small bus), and the estimated per vehicle cost for each model line;
- b. The per vehicle sales weighted average cost for each vehicle type produced by the manufacturer; and
- c. The per vehicle sales weighted average cost for the manufacturer's total production of vehicles with a GVWR of 10,000 pounds or less.

The agency also asks that commenters identify what percentage of retail price equivalent estimates are variable costs, and that the commenters provide a general description of the types of design modifications that are assumed to be necessary to comply with the proposed lockability requirements. Additionally, any per vehicle cost data should be based on 1990 material and labor costs.

NHTSA has also analyzed the effects of this proposal on small entities, in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposal would, if adopted as a final rule, not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA estimates that no significant economic impacts would be associated with this proposal, if it were adopted as a final rule.

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that, if adopted as a final rule, it would not have a significant effect on the human environment.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and NHTSA has determined that the proposal does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21).

Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety. Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. A new § 571.1.5 would be added to Standard No. 208, to read as follows:
S7.1 Adjustment.

S7.1.1.5 (a) Seat belt assemblies in any motor vehicle with a GVWR of 10,000 pounds or less that incorporate an emergency locking retractor for the lap belt or lap belt portion of a Type 2 seat belt assembly and that are installed at a designated seating position that is forward-facing or that can be adjusted to be forward-facing, except for the driver's seating position, shall provide means to lock the lap belt or lap belt portion, so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion may not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle.

(b) If the means provided to lock the lap belt or lap belt portion of a seat belt assembly in response to the requirement of S7.1.1.5(a) requires the vehicle user to take some action to activate the locking feature, the vehicle owner's manual shall include a step-by-step procedure with a diagram or diagrams showing how to activate the locking feature so that the seat belt assembly can tightly secure a child restraint system.

(c) Compliance with the requirements of S7.1.1.5(a) is demonstrated by the following procedure:

(1) If the seat is adjustable, it is adjusted to its forward-facing position. The webbing for the lap belt or lap belt portion of the seat belt assembly is extended to 100 percent of its length and returned so that it is 85 percent extended. The seat belt assembly is buckled. Any procedures recommended in the vehicle owner's manual, pursuant to S7.1.1.5(b), are followed to activate any locking feature for the seat belt assembly. The webbing remains at 85 percent extension. The length of the webbing withdrawn from the retractor is recorded.

(2) A load of 50 pounds is applied to the center of the lap belt or the lap belt portion of the belt assembly in a horizontal direction toward the front of the vehicle, at an elevation between 1

and 4 inches above the highest point on the seat cushion. When this loading level is attained, the length of the webbing withdrawn from the retractor is again recorded.

(3) The difference between the two lengths recorded for the webbing withdrawn from the retractor shall not exceed 1 inch.

* * * * *
Issued on July 25, 1990.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 90-17685 Filed 7-27-90; 8:45 am]
BILLING CODE 4910-59-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 835

Testimony of Board Employees

AGENCY: National Transportation Safety Board.

ACTION: Proposed rule.

SUMMARY: This amendment to part 835 is designed to preclude an interpretation of § 835.3 which would permit employees to testify as experts or give any opinion testimony, and it would set forth in greater detail the administrative and policy considerations underlying the regulation of employee testimony. This amendment is prompted by a judicial decision which concluded that § 835.3 does not prohibit all opinion testimony by Safety Board employees.

DATES: Interested persons are invited to submit written comments on or before August 29, 1990.

ADDRESSES: Comments should be sent in duplicate to Daniel D. Campbell, General Counsel, National Transportation Safety Board, room 818, 800 Independence Avenue SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel, (202) 382-6540.

SUPPLEMENTARY INFORMATION: Because transportation accidents investigated by the National Transportation Safety Board (NTSB) frequently lead to litigation and since NTSB employees are often requested to testify in suits stemming from their investigations, the NTSB has, in accordance with its broad mandate to implement rules necessary to the exercise of its functions (49 U.S.C. § 1903(b)(11)), adopted regulations governing the testimony of its employees (49 CFR part 835). The scope of permissible testimony is addressed in § 835.3, and § 835.3(a) states in part that "the use of Board employees as experts

to give opinion testimony would impose a serious administrative burden on the Board's investigative staff." Section 835.3(a) admonishes litigants to "obtain their expert witnesses from other sources." Section 835.3(b) authorizes NTSB employees to testify to "factual information they obtained during the course of the accident investigation, including factual evaluations embodied in their factual accident reports" and prohibits them from giving "opinion testimony concerning the cause of the accident."

In a recent case, *Booker v. Helicopter Services of Jacksonville, et al.*, Misc. No. 88-294, USDC DC (November 27, 1989), the court decided that the NTSB regulations do not prohibit its employees from testifying as to expert opinions, unless those opinions go to the cause of the accident. The *Booker* court concluded that:

There is nothing in the Board's regulations that prohibits all opinion testimony by Board employees, and no court has ever so held. The Board is simply wrong when it argues that all expert opinions of Board employees are protected from disclosure. . . . Their argument to this court that their regulations "prohibit an investigator from testifying as an expert and require that his testimony be limited to the facts and circumstances surrounding an accident", is simply not true. . . . (Mem. Op. at 5)

Another court, however, has stated that: "Section 835.3(b) forbids NTSB employees from testifying to their opinions regarding accidents, but allows testimony as to all factual information obtained during an investigation." *Swett v. Schenk*, 792 F.2d 1447, 1449 (9th Cir. 1986). Similarly, in *Air Wisconsin, Inc., v. United States*, No. 4-86-361, USDC Minn. (June 25, 1987), a decision cited in *Booker*, the court determined that:

The regulation [§ 835.3] bars the use of NTSB investigators as expert witnesses, and confines their testimony to factual matters in the investigation. They are barred from rendering their opinions, and may not use any NTSB report other than the factual accident reports as a testimonial aid. Order at 8.

Because of the uncertainty created by the *Booker* decision, the NTSB is proposing to amend § 835.3 to preclude an interpretation of its rules which would permit any opinion testimony by its employees. The proposed amendment would prohibit employees from rendering any opinion testimony and would confine their testimony to factual information obtained in the course of their investigation of an accident, including factual evaluations embodied in their factual accident reports. The

proposed amendment would also elaborate on the rationale for restricting the scope of testimony.

There are two singular statutory provisions which prohibit the use of NTSB reports in litigation. Section 701(e) of the Federal Aviation Act of 1958 (49 U.S.C. 1441(e)) states;

No part of any report or reports of the National Transportation Safety Board relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

Section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. § 1903(c)) provides:

No part of any report of the Board, relating to any accident or the investigation thereof, shall be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such report or reports.

These rare provisions reflect Congress' "strong . . . desire to keep the Board free of the entanglement of such suits." See, Rep. No. 93-1192, 93d Cong., 2d Sess., 44 (1974).

Although sections 1441(e) and 1903(c) are aimed at the NTSB reports, it would be illogical and counterproductive to prevent the use of any part of the NTSB report but allow the unlimited testimony of employees who were instrumental in conducting the investigation, drafting the NTSB report, and providing expert advice to the officials who made the findings embodied in the NTSB report. To permit the NTSB investigators to provide any expert testimony could entangle the agency in litigation no less than by allowing the admission or use of the NTSB reports or the opinions expressed in those reports.

Recognizing that there are legitimate reasons for the use of Board-developed information in private litigation—tests conducted by the Board cannot always be repeated—the Board has established procedures which permit reasonable disclosure and/or discovery of factual information. The NTSB has and will continue to furnish litigants with any factual information acquired through its investigative activities of which the NTSB has unique knowledge. Through part 835, the NTSB will continue to provide litigants with testimony on all pertinent factual information with respect to an accident which can then be presented to the parties' privately retained or employed experts for their independent assessment and analysis.

It is not, however, the duty or role of the NTSB to provide support services for litigation, and the NTSB will bar the expert testimony of its employees even

if the opinion testimony does not concern the cause of the accident. The NTSB strives to segregate its safety oriented functions from the judicial assessment of liability and to maintain the complete independence and impartiality of the NTSB and its staff. For this reason, and unlike other Federal agencies (See, e.g., 49 CFR 9.5), the NTSB will not authorize its employees to testify on behalf of the United States where for example, the United States is sued because of the alleged negligence of another Federal agency. Giving expert testimony would in effect be taking sides in the litigation which would compromise the NTSB's position of neutrality in regard to litigation. The efficacy of the NTSB in promoting transportation safety is dependent on the public perception of the objectivity of its employees. Because the NTSB is totally independent of any party in the litigation, the testimony of NTSB employees has the inherent potential for influencing and persuading the trier of fact. For this reason, litigants attempt to gain an advantage by extracting favorable opinions from NTSB investigators. However, the judge or jury could incorrectly presume that the investigators' personal views reflect the official position of the agency. The analysis of transportation accidents is subjective and at times highly controversial, and the NTSB staff and the Board Members may have differing views. Moreover, under the *Booker* decision, our investigators could be compelled to furnish a garden-variety of expert views that the employees did not formulate during their investigation. Thus, NTSB employees could be compelled to use official government time to develop new opinions solely for the benefit of a litigant.

The proposed rule change is also consistent with the nondiscoverable status courts have accorded "Analysis Reports" prepared by NTSB investigators. In order to assist the supervisory personnel and Board Members in arriving at the determination of probable cause, NTSB investigators prepare internal, analytical reports which contain the investigators' review and analysis of publicly available facts, discussion of the relevance and significance of the facts to the accident scenario, development of various theories which may explain the probable cause of the accident and the elimination of those theories that the investigators believe are not supported by the evidence. Analysis reports reflect the sifting and selective discussion of the facts, and to a greater extent, the investigators' personal weighing and

analysis of the evidence culminating in their subjective views and reasoning concerning the probable cause of the accident. The analytical reports embody the links in the proposed sequence of causal events, including the elimination of possible causal factors. In short, these nondiscoverable analytical records do not merely contain the investigators' ultimate opinions about the cause of the accident but, instead, include the intermediate opinions leading to a recommended determination of cause. Courts have consistently held that the analysis reports cannot be discovered. See, e.g., *In Re Air Crash at Dallas/Fort Worth Airport on August 2, 1985*, 117 F.R.D. 392 (N.D. Tex. 1987), *Booker, supra*, *Air Wisconsin, supra*. Since these written opinions of the NTSB investigators are not discoverable, the Board intends that the same types of opinions be equally nondiscoverable when they are solicited through questioning of investigators during depositions.

Because this regulation provides a rule of agency organization, procedure, and practice, notice and public procedure hereon are unnecessary. However, the Board believes that it would be beneficial to solicit and consider comments from the public before implementing any amendments.

Regulatory Flexibility Act

Because this proposed rulemaking will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) analysis is required.

E.O. 12291

The NTSB has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

This regulation would not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 49 CFR Part 835

Courts, Government employees.

Accordingly, the National Transportation Safety Board proposes to amend part 835, chapter VIII, title 49, Code of Federal Regulations as follows:

PART 835—TESTIMONY OF BOARD EMPLOYEES

1. The authority citation for part 835 is

revised to read as follows:

Authority: 5 U.S.C. 301; 49 U.S.C. 1441; and 49 U.S.C. 1901 *et seq.*

2. By adding the following new sentence to the end of § 835.1:

§ 835.1 Purpose.

* * * The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

Section 835.3 is revised to read as follows:

§ 835.3 Scope of permissible testimony.

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress' "strong * * * desire to keep the Board free of the entanglement of such suits." Rep No. 93-1192, 93d Cong., 2d Sess., 44(1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators' opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board's investigative staff. Litigants must obtain their expert witnesses from other sources.

(b) For the reasons stated in paragraph (a) of this section and § 835.1, Board employees may only testify as to the factual information they obtained during the course of an investigation, including factual evaluations embodied in their factual accident reports. However, they shall decline to testify regarding matters beyond the scope of their investigation, and they shall not give any expert or opinion testimony.

Dated: July 24, 1990.

James L. Kolstad,
Chairman.

[FR Doc. 90-17674 Filed 7-27-90; 8:45 am]

BILLING CODE 7533-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals

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

ACTION: Notice of receipt of request for rulemaking and request for information.

SUMMARY: NMFS has received a request from the Department of the Air Force for a take of marine mammals incidental to launches of the Titan IV space vehicle from Vandenberg Air Force Base, Calif. over the next 5 years. NMFS is requesting information, suggestions, and comments on whether it is appropriate to issue regulations and on the structure and content of the regulations.

DATES: Comments on this request should be received no later than August 29, 1990.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910. A copy of the request may be obtained by writing to this address.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz, Office of Protected Resources, NMFS, (301) 427-2322.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5) of the Marine Mammal Protection Act directs the Secretary of Commerce to allow, on request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. On September 29, 1989, NMFS and the U.S. Fish and Wildlife Service published a final rule implementing amendments made to the MMPA in 1986 that allow a take of depleted as well as non-depleted marine mammals and also changed the conditions under which an incidental take is allowed.

On October 31, 1988, NMFS issued a biological opinion under Section 7 of the Endangered Species Act to the Air Force concerning the impacts of proposed launches and returns of the Titan II and

Titan IV Launch Operations Program, SLC-4, at Vandenberg Air Force Base. A copy of the opinion is available from the above address.

On April 7, 1986, NMFS issued final regulations that allowed the Air Force a take of marine mammals incidental to space shuttle launches from Vandenberg Air Force Base. The current request from the Air Force is similar to the one concerning launches of the space shuttle. A copy of the final rule is available from the above address.

Description of Request

On June 10, 1990, NMFS received a request from the Department of the Air Force for an incidental take of six species of seals and sea lions that occur in the Northern Channel Islands. They are the Guadalupe fur seal, Steller sea lion, harbor seal, northern elephant seal, northern fur seal, and California sea lion. The Guadalupe fur seal, the Steller sea lion, and the Pribilof Islands stock of the northern fur seal are depleted species under the MMPA.

The Air Force describes the Titan IV program as a continuation of an existing launch program at the base using modified and upgraded Titan 34D missiles. Sonic booms from the launch vehicle may become "focused" within a narrow band under the flight path. Focused sonic booms may reach 147 decibels (dB or 10 PSF (pounds per square foot)). A sonic boom at this sound level has the potential to cause auditory damage and startle responses.

During the ascent of the launch of the Titan IV space vehicle from Vandenberg AFB, it may pass over the Northern Channel Islands which is inhabited by the six species of seals and sea lions. Of the Channel Islands, San Miguel is the most likely to receive a focused sonic boom. Although the specific dates and trajectories are classified, the first launch is expected in late 1990. Two launches are planned each year at least until 1995 although it is possible because of overlapping schedules that four may occur each year. The Air Force believes that during the 5 years the regulations would be in effect, there would be 11 launches of the Titan IV space vehicle.

The Air Force has stated that a "taking" will occur as the result of infrequent, incidental and unintentional harassment. The two primary concerns are that the focused sonic boom will cause the animals to stampede and pups will be trampled or separated from their mothers and that the animals' hearing may be affected.

Information Requested

NMFS requests interested persons to submit comments, information and suggestions concerning the request and the structure and content of regulations to allow the taking. NMFS will consider this information in developing an environmental assessment, and, if appropriate, proposed regulations allowing the taking of marine mammals incidental to this activity. If NMFS proposes regulations, interested parties will be given opportunity to comment.

Dated: July 23, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-17612 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 55, No. 146

Monday, July 30, 1990

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 90-122]

Declaration of Emergency Because of the Mediterranean Fruit Fly

A serious outbreak of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is occurring in Florida. This is a separate outbreak from the California infestation, for which an emergency was declared on February 1, 1990 (55 FR 1990).

The Mediterranean fruit fly is one of the most destructive pests of over 200 species of fruits, nuts and vegetables, especially citrus and stone fruits. The pest can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas.

The presence of this fruit fly in the United States could severely disrupt the fruit and vegetable industry and could cost a half-billion dollars annually due to the loss of export markets. The estimated potential annual loss to the California and Florida citrus industries attributable to an established fruit fly infestation is between \$3.2 billion and \$4.6 billion. If the Mediterranean fruit fly were to become established throughout its ecological range, foreign market losses could exceed an estimated \$539 million annually.

As of May 1, 1990, an infestation of the Mediterranean fruit fly had been found in a portion of Dade County, Florida. This infestation poses a serious economic threat to the agricultural industry of the United States.

In cooperation with the State of Florida, the Animal and Plant Health Inspection Service (APHIS) has initiated a program to eradicate this fruit fly infestation. The State of Florida is funding approximately one half of the program costs. However, continuing efforts to eradicate this and other fruit

flies from different areas of the United States and to facilitate the early detection of fruit fly infestations have substantially increased program costs. APHIS resources are insufficient to regulate multiple and concurrent fruit fly eradication projects, and additional funding is needed.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus and other fruit and vegetable growing industries of this country and hereby authorize the transfer and use of such funds deemed necessary from appropriations or other funds available to the agencies or corporations of the United States Department of Agriculture for the conduct of a program to detect and identify Mediterranean fruit fly infested areas, to control and prevent the spread of the Mediterranean fruit fly to noninfested areas in the United States, and to eradicate Mediterranean fruit fly wherever it may be found in the continental United States.

EFFECTIVE DATE: This declaration of emergency shall become effective July 23, 1990.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 90-17663 Filed 7-27-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-121]

Declaration of Emergency Because of Mexican Fruit Fly

A serious outbreak of the Mexican fruit fly, *Anastrepha ludens* (Loew), is occurring in California.

The Mexican fruit fly is one of the most destructive pests of more than 200 species of fruits, nuts, and vegetables, especially citrus and stone fruits. This pest can develop rapidly and spread easily, causing severe damage to entire citrus and other fruit and vegetable growing areas.

The presence of the Mexican fruit fly in the United States could severely disrupt the fruit and vegetable industry and could cost a half-billion dollars annually due to the loss of export markets. The estimated potential annual loss to the California and Florida citrus industries attributable to an established fruit fly infestation is between \$3.2 billion and \$4.6 billion. If the Mexican

fruit fly were to become established throughout its ecological range, foreign market losses could exceed an estimated \$539 million annually. It has been estimated that if the Mexican fruit fly became established throughout California, yearly control costs in that State alone would be \$100 million.

As of May 1, 1990, infestations of the Mexican fruit fly had been found in portions of Los Angeles and San Diego Counties, California. These infestations pose a serious economic threat to the agricultural industry of the United States.

In cooperation with the State of California, the Animal and Plant Health Inspection Service (APHIS) has initiated a program to eradicate this fruit fly infestation. The State of California is funding approximately one half of the total program costs. However, continuing efforts to eradicate this and other fruit flies from different areas of the United States and to facilitate the early detection of fruit fly infestations have substantially increased program costs. APHIS resources are insufficient to regulate these multiple and concurrent fruit fly eradication projects, and additional funding is needed.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus and other fruit and vegetable growing industries of this country and I authorize the transfer and use of such sums as I may deem necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to detect and identify Mexican fruit fly infested areas, to control and prevent the spread of the Mexican fruit fly to noninfested areas in the United States, and to eradicate the Mexican fruit fly wherever it may be found in the continental United States.

EFFECTIVE DATE: This declaration of emergency shall become effective July 23, 1990.

Clayton Yeutter,
Secretary of Agriculture.

[FR Doc. 90-17662 Filed 7-27-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held August 7, 1990, at 9:30 a.m., in the 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 computer peripherals, components and related test equipment or technology. The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 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 Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(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, call Ruth D. Fitts at 202-377-4959.

Dated: July 24, 1990.

Betty A. Ferrell,

*Director, Technical Advisory Committee Unit,
Office of Technology and Policy Analysis.*

[FR Doc. 90-17603 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket No. 29-90]

Foreign-Trade Zone 64; Jacksonville, FL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Jacksonville Port Authority (JPA), grantee of FTZ 64, requesting authority to expand its zone in Jacksonville, Florida, within the Jacksonville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 18, 1990.

FTZ 64 was approved on December 29, 1980 (Board Order 170, 46 FR 1330, 1/6/81). Expansions were authorized by the Board on September 20, 1985 (Board Order 312, 50 FR 40209, 10/2/85), and December 24, 1986 (Board Order 337, 52 FR 1214, 1/12/87). The project currently involves 3 sites: Site 1 (2.4 acres) at the Jacksonville International Airport; Site 2 (43 acres) a warehouse facility owned and operated by Unit Distribution, Inc., located at 2201 North Ellis Road; and, Site 3 (119 acres) within JPA's 856-acre Blount Island Terminal.

The current proposal would expand Site 1 at the airport site by adding a parcel (144 acres) at Pecan Park and Terrell Roads; expand Site 3 to include the entire JPA Blount Island Terminal Complex; add a site (135 acres) at JPA's Talleyrand Docks and Terminal Facility, 2701 Talleyrand Avenue; and, add a site (200 acres) at the International Tradeport Complex at Airport Road. All of the new sites involve JPA property except the Tradeport complex which is owned by Wilma Southeast, Inc.

No manufacturing approvals are being sought at this time. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE First Avenue, Miami, Florida 33131; and, Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232.

Comments concerning the proposed zone expansion are invited in writing

from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 1, 1990.

A copy of the application is available for public inspection at each of the following locations:
Port Director's Office, U.S. Customs Service, 2831 Talleyrand Avenue, Jacksonville, FL 32206
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: July 24, 1990.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 90-17604 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 481]

Authorization To Withdraw Certain "Zone Restricted" Merchandise From Foreign-Trade Subzones 78C and 78D Hartsville and Phipps Bend, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: After consideration of the request of the Metropolitan Nashville Port Authority, grantee of Foreign-Trade Zone 78, for authority under section 3 of the Foreign-Trade Zones Act (19 U.S.C. 81c) on behalf of subzone user, the Park Company, to withdraw for domestic entry certain electric power generating equipment presently in "zone restricted" status at Subzones 78C and 78D (TVA Hartsville and Phipps Bend sites) in Tennessee, and also in consideration of the recommendation of the District Director of Customs, that the decision apply to all such equipment at the sites, authority is granted to permit the merchandise to be placed in "nonprivileged foreign" status (19 CFR 146.42). Withdrawals shall be subject to entry procedures including the payment of applicable Customs duties.

Signed at Washington, DC, this 20th day of July 1990.

Francis J. Sailer,

*Acting Assistant Secretary of Commerce for
Import Administration, Chairman, Committee
of Alternates, Foreign-Trade Zones Board.*

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 90-17605 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration**Short-Supply Determination; Certain Modular Steel Scaffolding**

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply determination on certain modular steel scaffolding.

SHORT-SUPPLY REVIEW NUMBER: 20.

SUMMARY: The Secretary of Commerce ("Secretary") hereby denies a request for a short-supply allowance of 1,650 metric tons of certain modular steel scaffolding for the remainder of 1990 under Article 8 of the U.S.-E.C. steel arrangement.

EFFECTIVE DATE: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Sally A. Craig or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377-3910 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On June 22, 1990, the Secretary received an adequate short-supply petition from Layher, Incorporated ("Layher"), a subsidiary of Wilhelm Layher GmbH & Co. KG of Guglingen-Eibensbach in the Federal Republic of Germany, requesting a short-supply allowance for 1,650 metric tons of certain modular steel scaffolding for the remainder of 1990 under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products. Layher's petition alleges that the Layher Allround Scaffolding is unique in characteristics and applications and cannot be purchased in the U.S. market. Furthermore, export licenses of the foreign parent company are insufficient to cover Layher's need for the remainder of 1990. The Secretary conducted this short-supply review pursuant to section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Pub. L. NO. 101-221, 103 Stat. 1886 (1989) ("the Act"), and Section 357.102 of the Department of Commerce's Short-Supply Regulations, published in the *Federal Register* on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

The requested material meets the following specifications:

General: Allround Modular System scaffold including three basic components—Vertical Standard,

Horizontal Ledger and Diagonal Brace. Base, decks and supplementary elements to order. Components fastened by Allround Joint;

Metallurgical: Galvanized steel;
Dimensions: Components compatible with imperial and metric requirements. Sized to order: Standards (1.0–4.0 meters), Ledgers (0.73–1.09 meters), Braces (0.73–3.07 meters). Tubing utilized in Standards and Ledgers is per German Standards DIN 2441, 48.3 mm diameter (1.90 inches +) and 3.2 mm wall thickness (0.13 inches);

Design Features: Allround Joint, a "rosette" with holes at 0°, 90°, 180° and 270° on circular disk to facilitate square assembly. Second series of four, larger joint holes provide angular connections for Braces and Ledgers to permit circular configuration. Ledgers and Braces connected to Standards by wedge locks anchored in joint holes, creating rigid friction connection.

Intended Application: For use in unique industrial applications, e.g. petrochemical, paper and power plant maintenance, airline and shipbuilding facilities.

ACTION: On June 22, 1990, the Secretary established an official record on this short-supply request (Case Number 20) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. On July 2, 1990, the Secretary published a notice in the *Federal Register* announcing a review of this request and soliciting comments from interested parties. Comments were required to be received no later than July 9, 1990, and interested parties were invited to file replies to any comments no later than five days after that date. In order to determine whether this product, or a viable alternative product, could be supplied in the U.S. market for the remainder of 1990, the Secretary sent questionnaires to: Bil-Jax, Inc. ("Bil-Jax"); Patent Scaffolding Co., a Division of Harsco Corporation ("Patent"); Burke Scaffolding ("Burke"); Waco Scaffolding & Equipment ("Waco"); SGB Construction Services, Inc. ("SGB"); Scaffold Services; and Safway Steel Products ("Safway"). The Secretary received adequate questionnaire responses from six of the seven companies, with Scaffold Services being the exception, and no comments to the *Federal Register* notice.

QUESTIONNAIRE RESPONSES: Five respondents (Bil-Jax, Patent, SGB, Waco, and Safway) claim that they do not produce the Layher Allround Scaffolding. However, each produces and/or supplies a comparable modular steel scaffolding system that generally is used in the same applications as the

Layher product. Several companies note that they currently have low operating rates (Waco, Safway, and Patent). The respondents also note order-to-delivery periods ranging from instantaneous to three months. Several of these companies state that it would be unwilling to supply its modular scaffolding to Layher's customers because they are competitive dealers. Both Patent and Bil-Jax state that they would be willing to manufacture the Layher system under a licensing agreement, if requested.

Burke states that it produces and supplies steel scaffolding completely meeting or exceeding Layher's specifications, with the exception of certain secondary accessories. Burke further states that it currently holds inventory not only of the Burke Sure Lock as well as the Burke Kwikstage scaffolding systems, but also of Layher Allround Scaffolding it acquired previously via the buyout of competitors. Burke estimates that, combined with its sister company Umacs of Canada Inc., it holds approximately 6,000 metric tons of Layher Allround and Burke Sure Lock Systems Scaffold, with Layher Allround composing approximately 45 percent of that total. Burke maintains that any of the three products it holds in its inventory can be used in similar, if not identical, markets. Burke also notes that Burke Sure Lock and Layher Allround scaffolding "can be freely interchanged on any project application, with extremely minor and secondary compatibility questions."

ANALYSIS: Layher challenges the ability of domestic mills to meet the needs of domestic consumers for Allround Scaffolding. It questions Burke and its ability to meet market demand with the Layher product it currently possesses, and it believes that the other modular scaffolding systems available domestically do not possess the same qualities as the Layher Allround. Regarding Layher material maintained by Burke, Layher alleges that Burke realistically cannot meet U.S. demand because of various factors, notably the limited components Burke has of the Layher Allround in inventory. Burke certifies it is willing to make the Layher Allround in inventory available to U.S. customers, and can meet total market demand. Burke never addressed the specific component needs because this was not a consideration in this review. Burke only notes that it has not refused to sell Layher material to any individual or company which has made an inquiry to it. Regarding other types of modular scaffolding, the Secretary acknowledges

that the Layher product may exhibit certain physical and mechanical characteristics that differ from other products produced and supplied by U.S. companies. However, information obtained in this review did not indicate that unique applications require exclusively the Layher Allround. Hence, no definitive evidence was provided indicating the unacceptability of material or unwillingness of companies to supply their own modular scaffolding (Burke, SGB, Waco, Bil-Jax, and Safway).

CONCLUSION: Five potential domestic suppliers of modular steel scaffolding have demonstrated a willingness to offer and supply either Layher Allround or alternative modular scaffolding systems that can be used in the same applications as the Layher product. Therefore, the Secretary determines that short supply does not exist with respect to the requested modular steel scaffolding. Pursuant to section 4(b)(4)(A) of the Act, the § 357.102 of Commerce's Short-Supply Regulations, the Secretary denies Layher's request for a short-supply allowance of 1,650 metric tons of certain modular steel scaffolding for the remainder of 1990.

Dated: July 20, 1990.*

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17606 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Final Results of the 1988/1989 Antidumping Duty Administrative Review; Fishnetting of Man-Made Fibers From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On April 18, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on fishnetting of man-made fibers from Japan (55 FR 14454). The review covers three manufacturers/exporters of this merchandise to the United States during the period June 1, 1988 through May 31, 1989.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and one respondent. Based on our analysis of the

comments received, the final results of the review are the same for two of the companies as those presented in the preliminary results. However, based on information obtained from the U.S. Customs Service, the final result for one company has been changed.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Rick Herring, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2239 or 377-3530, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department published in the *Federal Register* (53 FR 10264) the final results of its last completed administrative review covering the period June 1, 1980 through May 31, 1986, for the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). The preliminary results of the antidumping duty administrative review covering the period June 1, 1986 through May 31, 1987, were published on September 23, 1988 (53 FR 37013). The final results of that administrative review have not yet been published.

On April 18, 1990, the Department published in the *Federal Register* (55 FR 14454) the preliminary results of this administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of fishnetting of man-made fibers from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 5608.11.00 and 5608.90.10. Prior to 1989, such merchandise was classifiable under items 355.4520 and 355.4530 of the *Tariff Schedules of the United States Annotated (TSUSA)*. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On December 29, 1986, the International Trade Commission (ITC) published its determination that an industry in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of salmon gill fishnetting of man-made fibers from

Japan covered by the antidumping finding if that portion of the finding concerning salmon gill fishnetting were to be revoked (51 FR 46947). The Department determined in the final results of a previous review of this finding (53 FR 10264, March 30, 1988) that the effective date of the revocation of the portion of the finding applicable to salmon gill fishnetting is December 29, 1986, the date that the ITC's decision was published in the *Federal Register*.

This review covers three manufacturers/exporters of fishnetting of man-made fibers from Japan for the period June 1, 1988 through May 31, 1989. These three firms are Benny Toyama Corp. (Benny Toyama), Hakodate Seimo Sengu Co., Ltd. (Hakodate), and Hakodate Seimo Sengu Co., Ltd. (Hakodate)/Mitsui and Company Ltd. (Mitsui).

We used the best information available for Benny Toyama, Hakodate, and Hakodate/Mitsui for the purposes of these final results. First, as explained in our preliminary results, Benny Toyama and Hakodate failed to respond, or to provide an adequate response, to our requests for information for this administrative review. The failure of Benny Toyama and Hakodate to provide a complete and adequate response required the Department to use the best information available. 19 CFR 353.37(a). See Comments 1-3.

Second, on May 31, 1990, the Department received a packet of shipment invoices from a Customs field officer in Seattle, Washington, demonstrating that Mitsui exported both salmon gill and other fishnetting produced by Hakodate during the period of this administrative review. On June 8, 1990, the Department requested that Mitsui clarify this apparent discrepancy between the shipment invoices, the questionnaire response which stated that it only exported salmon gill fishnetting during the review period, and its certification statement. On June 22, 1990, in response to the Department's request for clarification, Mitsui confirmed that sales of fishnetting other than salmon gill fishnetting were made during the period of this administrative review. Accordingly, the Department is using the best information available for Hakodate/Mitsui for the purposes of this final determination because Hakodate/Mitsui failed to provide a complete and adequate response. 19 CFR 353.37(a).

For all three firms, the Department used as the best information available the highest rate published in the final results of its last completed administrative review of this finding (53

FR 10264, March 30, 1988) covering the period June 1, 1980 through May 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from both the petitioner and one respondent. Hakodate.

Comment 1: Hakodate states that the Department failed to respond to its request of February 26, 1990, for exemption from the requirement to submit questionnaire responses in computerized format. Therefore, Hakodate claims that it is not, and was not, obligated to respond to the deficiency questionnaire until the Department tenders a response.

DOC Position: The Department disagrees. As shown below, the Department followed the correct procedure as dictated by 19 CFR 353.31(e)(3). Therefore, Hakodate was obligated to submit a response in computerized format to the Department's original questionnaire and deficiency questionnaire.

After sending Hakodate a questionnaire for this review on October 10, 1989, the Department requested in a letter dated October 31, 1989, that relevant portions of the questionnaire response be provided on computer diskette and submitted together with Hakodate's response to the Department. In our October 31, 1989 letter, we provided Hakodate with Import Administration contacts in Washington, DC and Tokyo, Japan. On November 13, 1989, Hakodate stated that it lacked computer facilities and asked that the Department provide information on Japanese agents capable of converting its information to computerized format. The Department could not recommend computer vendors to Hakodate because, as a government agency, we cannot suggest the services of a particular private party.

Hakodate also stated that it made only a small number of shipments of the subject merchandise to the United States during the review period. In considering requests of exemption from the computerization requirement, the Department examines not only the number of shipments, but also the overall volume of transactions and accompanying data entries within the review period. While the number of Hakodate's shipments to the United States was relatively small, the overall volume of transactions and accompanying data entries was considerable. Therefore in Hakodate's case, the Department found it to be impractical to analyze the number of data entries included in Hakodate's

response unless such information was provided in a computerized format.

On December 1, 1989, Hakodate sent its responses to the Department's original questionnaire for this review in non-computerized format. On February 2, 1990, the Department sent a deficiency letter to Hakodate which reaffirmed that the company's responses must be submitted in computerized format in accordance with 19 CFR 353.31(e)(3) given the number of transactions during the review period. Hakodate was given until February 26, 1990, to complete its deficiency response.

The Department contacted Hakodate again on February 26, 1990, to ascertain if the company planned to submit a response to the deficiency letter of February 2, 1990. Hakodate did not submit the required information, and instead filed a request for exemption from the computerization requirement based on the claim that it was an unreasonable burden in time and expense. On March 8, 1990, the Department established by contacting a computer services vendor in Tokyo that the cost of inputting the relevant data onto computer diskette would range from 200 to 300 U.S. dollars. Therefore, the Department determined that this cost did not constitute an unreasonable burden, and sent a letter to Hakodate on March 8, 1990, again stressing that Hakodate was still required to submit its data in computerized format. The Department granted Hakodate additional time, until March 19, 1990, to tender a response in the format requested. Furthermore, the Department stated that failure to submit the data in the format required by that date would result in the information being rejected and lead to use of the best information available as required by section 776(c) of the Act in making our determination in this review. The relevant data were never submitted in the required format. Therefore, Hakodate's failure to provide a complete and adequate response required the Department to use the best information available. 19 CFR 353.37(a).

Comment 2: Hakodate contends that the Department's reliance on the best information available is unsupported by substantial evidence on the record and contrary to law.

Petitioner states that Hakodate has clearly not submitted enough information for the Department to reach a determination whether or not margins exist. The petitioner further claims that under such circumstances, the Department is left with no recourse but to resort to use of the best information available.

DOC Position: The Department's decision to use the best information

available is based on the fact that Hakodate did not provide information in the computerized format required. But equally important, it is also based on the fact that the Department never received responses, in any form, from Hakodate to its deficiency questionnaire. We requested in the deficiency questionnaire, among other things, that Hakodate detail its costs so that the Department could calculate adjustments for physical differences in merchandise. Since there were no sales of identical merchandise in both the U.S. and home markets, we could not perform an analysis of sales without cost data and adjustments for physical differences in merchandise as required by 19 CFR 353.57.

Comment 3: Hakodate claims that the questionnaire sent to it fails to comply with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) in that it does not bear the required Office of Management and Budget Control Number. In addition, the company states that it is a violation of the Public Protection provision of 44 U.S.C. 3512 to impose an antidumping margin based on the use of the best information available that, in effect, penalizes Hakodate for failure to submit a non-computerized response.

DOC Position: The requirements of the Paperwork Reduction Act do not apply to collections of information during the conduct of an administrative action or investigation involving an agency against specific individuals or entities. See 44 U.S.C. 3518(c)(1)(B); 5 CFR 1320.3(c). This exception applies during the entire course of the investigation or action once a case file or its equivalent has been opened with respect to a particular party. Therefore, the requirements of the Paperwork Reduction Act, including 44 U.S.C. 3512, do not apply to the collection of information during this administrative review following the initiation of the antidumping investigation for fishnetting of man-made fibers from Japan. Finally, the use of the best information available does not constitute a penalty as the term is used in 44 U.S.C. 3512, but a method by which the Department determines current antidumping margins given a person's refusal or inability to produce information in a timely manner and in the form required.

Final Results of the Review

As a result of our review of the comments received, we have determined that the following margins exist for the period June 1, 1988 through May 31, 1989.

Manufacturer/Exporter	Margin (percent)
Benny Toyama.....	18.30
Hokodate.....	18.30
Hokodate/Mitsui.....	18.30

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions for each exporter directly to the Customs Service.

The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of fishnetting of man-made fibers from Japan that are entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the latest rate applicable for each of those firms (49 FR 18339, April 30, 1984; 53 FR 10264, March 30, 1988); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) no cash deposit will be required for any future entries of this merchandise from a new producer and/or exporter not covered in this administrative review, whose first shipments occurred after May 31, 1989, and who is unrelated to any reviewed firm or any previously reviewed firm. This is in accordance with our practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based that rate on best information available. Zero was the highest rate in a prior review for a producer with an acceptable response (53 FR 10264, March 30, 1988). These deposit requirements are effective for all shipments of fishnetting of man-made fibers from Japan 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 Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations (19 CFR 353.22(c)(8)).

Dated: July 20, 1990.

Francis J. Sailer,
Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17607 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-029]

Final Results of the 1987/1988 Antidumping Duty Administrative Review; Fishnetting of Man-Made Fibers From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On April 18, 1990, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty finding on fishnetting of man-made fibers from Japan (55 FR 14452). The review covers three manufacturers/exporters of this merchandise to the United States during the period June 1, 1987 through May 31, 1988.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioner and an importer, Jovanovich Supply Company. Based on our analysis of the comments received, the final results of the review are the same for two of the companies as those presented in the preliminary results. However, based on information obtained from the U.S. Customs Service, the final result for one company has been changed.

EFFECTIVE DATE: July 30, 1990.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Rich Herring, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2239 or 377-3530, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department published in the Federal Register (53 FR 10264) the final results of its last completed administrative review covering the period June 1, 1980 through May 31, 1986, for the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). The preliminary results of the antidumping duty administrative review covering the period June 1, 1986 through May 31, 1987, were published on September 23, 1988 (53 FR 37013). The final results of that administrative review have not yet been published.

On April 18, 1990, the Department published in the Federal Register (55 FR 14452) the preliminary results of this administrative review of the antidumping finding on fishnetting of

man-made fibers from Japan. The Department has now completed this administrative review in accordance with Section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of fishnetting of man-made fibers from Japan. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) items 5608.11.00 and 5608.90.10. Prior to 1989, such merchandise was classifiable under items 355.4520 and 355.4530 of the *Tariff Schedules of the United States Annotated (TSUSA)*. The HTS and TSUSA item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

On December 29, 1986, the International Trade Commission (ITC) published its determination that an industry in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of salmon gill fishnetting of man-made fibers from Japan covered by the antidumping finding if that portion of the finding concerning salmon gill fishnetting were to be revoked (51 FR 46947). The Department determined in the final results of a previous review of this finding (53 FR 10264, March 30, 1988) that the effective date of the revocation of the portion of the finding applicable to salmon gill fishnetting is December 29, 1986, the date that the ITC's decision was published in the Federal Register.

This review covers three manufacturers/exporters of fishnetting of man-made fibers from Japan for the period June 1, 1987 through May 31, 1988. These three firms are Amikan Fishing Net Mfg. Co. (Amikan), Benny Toyama Corp. (Benny Toyama), and Hakodate Seimo Sengu Co., Ltd. (Hakodate)/Mitsui and Company Ltd. (Mitsui).

We have used the best information available for Amikan, Benny Toyama, and Hakodate/Mitsui for the purposes of this final determination. First, as explained in our preliminary determination, Amikan and Benny Toyama failed to respond, or to provide an adequate response, to our requests for information for this administrative review. Therefore, the failure of Amikan and Benny Toyama to provide a complete and adequate response required the Department to use the best information available. 19 CFR 353.37(a). See Comments 1-2.

Second, on May 31, 1990, the Department received a packet of

shipment invoices from a Customs field officer in Seattle, Washington, demonstrating that Mitsui exported both salmon gill and other fishnetting produced by Hakodate during the period of this administrative review. On June 8, 1990, the Department requested that Mitsui clarify this apparent discrepancy between the shipment invoices and its questionnaire response, which stated that it only exported salmon gill fishnetting during the review period. On June 22, 1990, in response to the Department's request for clarification, Mitsui confirmed that sales of fishnetting other than salmon gill fishnetting were made during the period of this administrative review. Accordingly, the Department is using the best information available for Hakodate/Mitsui for the purposes of this final determination because Hakodate/Mitsui failed to provide a complete and adequate response. 19 CFR 353.37(a).

For all three firms, the Department used as the best information available the highest rate published in the final results of its last completed administrative review of this finding (53 FR 10264, March 30, 1988) covering the period June 1, 1980 through May 31, 1986.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from the petitioner and an importer, Jovanovich Supply Co.

Comment 1: Jovanovich argues that Amikan has consistently assured them that it was not selling fishnetting on the U.S. market at less than fair market value. To substantiate this claim, Jovanovich submitted in its case brief a list of netting shipments received from Amikan for the review period covering June 1, 1987 through May 31, 1988. In addition, Jovanovich suggests that regardless of exchange rate fluctuations, Amikan has consistently increased its prices. Moreover, Jovanovich challenges the Department's use of the best information available.

Petitioner states that Jovanovich's argument that Amikan did not engage in dumping of the subject merchandise during the review period is not supported by the record. There can be no analysis regarding Amikan in the current instance because it failed to submit the necessary information for the Department to conduct a review. Without information upon which to base a determination, the Department has no recourse but to resort to the use of the best information available. Furthermore, the fact that the exchange rate has shifted between Japan and the United States is not an argument exonerating

potential dumping. It indicates that cost data are more clearly needed.

DOC Position: The information submitted by Jovanovich in its case brief relies on the importer's own records, and not those of Amikan. In order for the Department to make a determination with respect to Amikan, we require that Amikan provide us with the necessary information to make a determination. Among other things, Amikan did not provide us with the cost information necessary for making adjustments for physical differences in the merchandise as required by 19 CFR 353.57. This information is necessary because the merchandise Amikan sold in its home market was not identical to that which it sold to the United States.

Furthermore, Jovanovich's claim that Amikan consistently increased its prices even in the face of exchange rate fluctuations does not prove that dumping did not occur. Without the cost information requested of Amikan, we are unable to compare U.S. and home market sales. Therefore, the Department used the best information available as required under Section 776(c) of the Act.

Comment 2: Jovanovich requests that the Department translate its correspondence into Japanese for Amikan.

DOC Position: The antidumping law does not require that correspondence in an antidumping proceeding be translated into the language of a respondent. Amikan has participated fully in past administrative reviews of this antidumping finding without translated correspondence. Furthermore, in this review, Amikan communicated sufficiently to convince the Department that it should be exempted from the computerization requirement.

Final Results of the Review

As a result of our review of the comments received, we have determined that the following margins exist for the period June 1, 1987 through May 31, 1988.

Manufacturer/Exporter	Margin (percent)
Amikan	18.30
Benny Toyama	18.30
Hakodate/Mitsui	18.30

The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisal instructions for each exporter directly to the Customs Service.

The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of fishnetting of

man-made fibers from Japan that are entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipments of this merchandise manufactured or exported by the remaining known manufacturers/exporters not covered in this review will continue to be at the latest rate applicable for each of those firms (49 FR 18339, April 30, 1984; 53 FR 10264, March 30, 1988); (2) the cash deposit rate for the companies included in this notice will be that established in the final results of this administrative review; and (3) no cash deposit will be required for any future entries of this merchandise from a new producer and/or exporter not covered in this administrative review, whose first shipments occurred after May 31, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm. This is in accordance with our practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based that rate on best information available. Zero was the highest rate in a prior review for a producer with an acceptable response (53 FR 10264, March 30, 1988). These deposit requirements are effective for all shipments of fishnetting of man-made fibers from Japan 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 Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(8) of the Department's regulations (19 CFR 353.22(c)(8)).

Dated: July 20, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17608 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations

and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 90-098. **Applicant:** University of Alabama, Department of Geosciences, Gould-Simpson Building, Room 208, Tucson, AZ 85719. **Instrument:** Mass Spectrometer System, Model MAT 252. **Manufacturer:** Finnigan MAT, West Germany. **Intended Use:** The instrument will be used for electron impact ionization mass spectrometry for the measurements of the isotope ratios of carbon, nitrogen, oxygen and hydrogen. In addition, the instrument will be used for demonstration in GEOS 563 in which students learn stable isotope geochemistry and acquire skills in high-precision data acquisition. **Application Received by Commissioner of Customs:** June 18, 1990.

Docket Number: 90-099. **Applicant:** University of California, Earth & Space Sciences Department, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. **Instrument:** Mass Spectrometer, Model VG 3600. **Manufacturer:** VG Isotopes, United Kingdom. **Intended Use:** The instrument will be used for studies of natural geological mineral samples by the $^{40}\text{Ar}/^{39}\text{Ar}$ dating method in research focusing on tracing sediment provenance and thermal histories. **Application Received by Commissioner of Customs:** June 18, 1990.

Docket Number: 90-100. **Applicant:** Duke University, Department of Neurobiology, Bryan Building, Durham, NC 27710. **Instrument:** Electron Microscope, Model JEM 1200EXII. **Manufacturer:** JEOL, Ltd., Japan. **Intended Use:** The instrument will be used to study the ultrastructure of the central nervous system in the following experiments:

- (1) Structural organization of the superior colliculus;
- (2) Connectivity in the brainstem auditory system;
- (3) Development of the vertebrate nervous system;
- (4) Sensory motor integration in the midbrain;
- (5) Cytoarchitectonics of visual cortex and
- (6) Morphology of cells in the central nervous system. **Application Received by Commissioner of Customs:** June 18, 1990.

Docket Number: 90-101 and 90-102. **Applicant:** Harvard University, Department of Chemistry, 12 Oxford Street, Cambridge, MA 02138.

Instrument: Gas Chromatograph/Mass Spectrometers, Models JMS-AX505 and JMS-SX102. **Manufacturer:** JEOL, Japan. **Intended Use:** The instruments will be used for (1) examining chemical structures of synthetic and naturally occurring molecules of biological importance, such as prostaglandins, antibiotics, polypeptides, sugars and nucleic acids, (2) conducting structural studies of synthetic organometallic compounds and (3) providing educational training in a chemistry doctorate program. **Applications Received by Commissioner of Customs:** June 18, 1990.

Docket Number: 90-103. **Applicant:** South Dakota School of Mines and Technology, 501 E. St. Joseph, Rapid City, SD 57701. **Applicant:** Electron Microscope and EDK System, Model H-7000FA. **Manufacturer:** Hitachi, Ltd., Japan. **Intended Use:** The instrument will be used for research involving studies of the microstructure and identification of chemical phases of geological specimens, ceramic materials, metals and alloys. In addition, the instrument will be used for research student training. **Application Received by Commissioner of Customs:** June 19, 1990.

Docket Number: 90-104. **Applicant:** The University of Alabama, Department of Chemistry, Box 870336, Tuscaloosa, AL 35487-0336. **Instrument:** Mass Spectrometer, Model VG AutoSpec-R. **Manufacturer:** VG Instruments, Inc., United Kingdom. **Intended Use:** The instrument will be used for studies of newly synthesized chemical compounds such as: cancer and anti-AIDS compounds; anticancer heliangolides; CC-1065 and analogs; synthesis of alkaloids, rhabdomycin; antidepressants; and structure determinations of unusual heme prosthetic groups in transport proteins. Experiments will involve separation of complex matrices; interfacing of auxiliary hardware and other introduction techniques to the mass spectrometer; formation of gas phase ions characteristic of the compounds and analysis of these ions by the mass spectrometer system. The instrument will also be used in Chemistry 621 to give students a background in modern mass spectrometry as it is used to solve problems of the chemical analysis. **Application Received by Commissioner of Customs:** June 20, 1990.

Docket number: 90-105. **Applicant:** Woods Hole Oceanographic Institution, Woods Hole, MA 02543. **Instrument:** Oceanographic Sonar. **Manufacturer:** Seatex, Norway. **Intended use:** The instrument will be used for scientific mapping of the seafloor and objects on

the seafloor. **Application received by Commissioner of Customs:** June 20, 1990.

Docket number: 90-106. **Applicant:** University of Maryland at College Park, College Park, MD 20742. **Instrument:** Electron Microscope, Model JEM 1200EX. **Manufacturer:** JEOL, Ltd., Japan. **Intended use:** Ultrastructural morphologic study of virus particles, nucleic acids and other biomolecules and immunocytochemistry topographic study of tissue samples, resolution and contrast enhancement. In addition the instrument will be used in an electron microscopy course which will provide basic understanding of electron microscopy to biomedical investigators and provide knowledge of routine techniques in biological electron microscopy. **Application received by Commissioner of Customs:** June 21, 1990.

Docket number: 90-107. **Applicant:** Iowa State University, 132 Spedding Hall, Ames, IA 50011-3020. **Instrument:** Universal Rheometer, Model RHEOLAB MC10. **Manufacturer:** Physica Messtechnik, West Germany. **Intended use:** The instrument will be used to determine the viscosity vs. shear rate behavior at various temperatures to determine the optimum conditions for spinning polymer fibers. The instrument will also be used for educational purposes in the course the MSE 699 Thesis Research. **Application received by Commissioner of Customs:** June 21, 1990.

Docket number: 90-108. **Applicant:** Michigan Technological University, 1400 Townsend Drive, Houghton, MT 49931. **Instrument:** Electron Microscope, Model JEM 4000FX/TEMSCAN. **Manufacturer:** JEOL Ltd., Japan. **Intended use:** Study of high purity metals, ceramics, metal/ceramic composites, geological materials, semiconductor materials, organic polymers, and biological materials. In addition, the instrument will be used to produce educational videos for the courses: Introduction to Materials Science, Introduction to Electron Microscopy, Dislocation Theory, and Kinetics. **Application received by Commissioner of Customs:** June 22, 1990.

Docket number: 90-109. **Applicant:** University of California, San Diego, Department of Chemistry, B-017, La Jolla, CA 92093-3017. **Instrument:** Mass Spectrometer, Model MAT 252. **Manufacturer:** Finnigan Corporation, West Germany. **Intended use:** The instrument will be used to measure the stable isotopic ratios of oxygen and sulfur. The different categories of research include:

- (1) Isotopic composition of meteorites,

(2) Isotopic composition of high altitude atmospheric samples (air sulfur),

(3) Isotope fractionation process in photochemical reactions and

(4) Isotope fractionation process in radio-frequency induced plasmas.

The instrument will also be used in the courses: Chemistry 199, Chemistry 251 and Chemistry 299 in which students will receive "hands on" experience on the mass spectrometer in the form of special created, new research projects tailored to the students' interests and backgrounds. *Application received by Commissioner of Customs: June 22, 1990.*

Docket number: 90-110. Applicant: Massachusetts Institute of Technology, 79 Amherst Street, Cambridge, MA 02139. Instrument: Refractometer, Model R-1. Manufacturer: Canon Europa NV, The Netherlands. Intended use: The instrument will be used to study the properties of ocular accommodation, especially in human infants and children. Application received by Commissioner of Customs: June 20, 1990.

Docket Number: 90-111. Applicant: Duke University Medical Center, Sands Building, Research Drive, Room 362, Durham, NC 27710. Instrument: Mechanical and Optical Measurement of Muscle Contractile Biophysics Station. Manufacturer: Wissenschaftliche Geräte, Dr. Guth, West Germany. Intended Use: The instrument will be used to study the basic mechanism of force generation in single cells (fibers). The system measures and controls the physical properties of isolated 'skinned' muscle fibers during exposure to the interior structures and proteins to bathing solutions containing chemical agents that produce or modify states of contraction, relaxation, rigor etc. Application Received by Commissioner of Customs: June 26, 1990.

Docket Number: 90-112. Applicant: Rice University, Houston, TX 77251. Instrument: Mass Spectrometer, Model MAT 262V. Manufacturer: Finnigan MAT, GmbH, West Germany. Intended Use: Measurement of the isotope ratios of elements using thermal ionization which is required for radiometric dating of rock and mineral ages. The instrument will also be used for isotope dilution analysis. In addition, the instrument will be used to train students in the theory and operation of multiple collector thermal ionization mass spectrometers. Application Received by Commissioner of Customs: June 26, 1990.

Docket Number: 90-113. Applicant: Loyola University Medical Center, Stritch School of Medicine, 2160 S. First Avenue, Maywood, IL 60153. Instrument: Electron Microscope, Model EM 900.

Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used for studies of human and experimental animal tissues. The specific experiments conducted will include:

(1) Response of tumor to various treatment protocols in both patients and experimental conditions in animals,

(2) Study of the mechanism of rejection in patients under treatment and in animals subjected to various experimental treatment protocols and

(3) study of the mechanism of amyloidogenesis using a murine model with particular emphasis on brain degenerative disorders.

In addition the instrument will be used in the training of graduate students working on their doctoral dissertations, pathologists in training and medical students pursuing their research projects. *Application Received by Commissioner of Customs: June 28, 1990.*

Docket Number: 90-114. Applicant: The Children's Memorial Hospital, 2300 Children's Plaza, Chicago, IL 60614. Instrument: Electron Microscope, Model EM 900 PC. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used for studies of biological samples (cells, tissues) of both experimental animals and human biopsy materials for diagnostic purposes. In addition, the instrument will be used to train pathologists in the usefulness of electron microscopy in diagnosis of human disease. Application Received by Commissioner of Customs: June 28, 1990.

Docket Number: 90-115. Applicant: University of Wyoming, University Station, Laramie, WY 82071. Instrument: System Upgrade for Mass Spectrometer. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: This is an upgrade for a mass spectrometer which will be used for isotopic analysis of a wide variety of elements extracted from geologic specimens for the purpose of research in the fields of geochronology, geochemistry, and isotope geology. Geochronological and isotope geological studies will be conducted to obtain accurate and precise crystallization ages and thermal histories of rocks and to understand the times and mechanisms involved in producing geochemical variations within the earth's crust and mantle. In addition, the instrument will be used for educational purposes in the course Isotope Geology (Geol 708) which is open to senior undergraduates and graduate students. Application Received

by Commissioner of Customs: June 29, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90-17609 Filed 7-27-90; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.79(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 6-706, 622, "Use of Paramagnetic Metallaoporphyrins as Contrast Agents for Tumors in NMR Imaging" to Molecular Biosystems, Inc., having a place of business in San Diego, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention provides water-soluble paramagnetic metalloporphyrins used as contrast enhancing agents for magnetic resonance imaging. These agents exhibit excellent localization, non-toxicity and surprisingly high contrast enhancement in magnetic resonance imaging applications.

The availability of the invention for licensing was published in the Federal Register Vol. 50, p. 21921 (May 29, 1985) and in the Government inventions available for Licensing of August 20, 1985. A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 703/487-4850 or by writing to Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Papan Devnani, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151. Properly filed

competing applications received by the NTIS in response to this notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,
Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.
 [FR Doc. 90-17650 Filed 7-27-90; 8:45 am]
 BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

July 20, 1990.
AGENCY: Committee for the Implementation of Textile Agreements (CITA).
ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: July 30, 1990.
FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

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

The Government of the United States has decided to continue the restraints on Categories 638/639 and 647/648 for an additional twelve-month period, beginning July 29, 1990 and extending through July 28, 1991.

The current limit for Categories 647/648 has been filled. There is a significant amount of overshipments in these categories, and therefore, the limit will most likely fill upon opening. Importers should take necessary precautions with their shipments.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States** (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 41862, published on October 12, 1989.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 20, 1990.
 Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 30, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in the following categories, produced or manufactured in the United Arab Emirates and exported during the period beginning on July 29, 1990 and extending through July 28, 1991, in excess of the following levels of restraint:

Category	12-month restraint limit
638/639.....	76,052 dozen.
647/648.....	54,207 dozen.

Imports charged to these category limits for the period July 29, 1989 through July 28, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with 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.

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COMMODITY FUTURES TRADING COMMISSION

The Chicago Mercantile Exchange's and the Intermarket Clearing Corp.'s Proposals To Expand Their Respective Cross-Margining Systems With the Options Clearing Corporation To Include the Positions of Market Professionals

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market and clearing organization rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") and the Intermarket Clearing Corporation ("ICC") have submitted to the Commodity Futures Trading Commission ("Commission") separate proposals which would allow the CME and ICC to expand each of their respective cross-margining systems with the Options Clearing Corporation ("OCC") to include the positions of eligible market professionals. Each of the proposals would permit the cross-margining of positions of market professionals in certain options cleared by the OCC with positions in certain commodity futures and option contracts respectively cleared by the CME or ICC. Under the respective proposals, eligible market professionals would include market-makers, specialists, and registered traders at OCC-cleared exchanges and members of the CME or of ICC-cleared exchanges who actively trade for their own accounts the OCC-cleared options and CME- or ICC-cleared futures contracts and futures option contracts that are eligible for cross-margining. The Commission has determined that both of these proposals are of major economic significance and that, accordingly, publication of the two proposals is in the public interest, will assist the Commission in considering the views of interested persons and is consistent with the purposes of the Commodity Exchange Act ("Act").

DATES: Comments must be submitted by August 29, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

By letters dated January 30, 1990 through June 18, 1990, the CME, pursuant to Section 5a(12) of the Act and Commission Regulation 1.41(b), submitted to the Commission a proposal which would permit the CME to expand the CME-OCC cross-margining system¹ to include certain non-proprietary accounts carried by participating Clearing Members of the CME and OCC on behalf of eligible market professionals.²

Similarly, by letter dated March 14, 1990, the ICC, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), submitted to the Commission a proposal to expand its cross-margining system with the OCC³ to include market professional accounts cleared through participating ICC and OCC clearing members.⁴

¹ The Commission approved the CME-OCC cross-margining system and accompanying CME rules on September 26, 1989 subject to certain conditions. The Securities and Exchange Commission ("SEC") approved the CME-OCC cross-margining system and corresponding OCC rule changes on the same day.

² The OCC has filed corresponding rule changes in connection with the CME-OCC cross-margining system with the SEC. The SEC has published a Federal Register release soliciting comments on the OCC's proposed cross-margining rule changes. Securities Exchange Act Release No. 34-27717, 55 FR 7398 (March 1, 1990).

³ The Commission approved the ICC-OCC cross-margining system on June 1, 1988 on a one-year pilot program basis. The operation of the ICC-OCC cross-margining system is discussed in T&M's May 11, 1988 memorandum to the Commission recommending approval of that system.

The SEC approved a related OCC rule submission on October 3, 1988. See Securities Exchange Act Release No. 26153, 53 FR 39567 (October 7, 1988). The SEC also granted ICC an 18-month temporary registration as a clearing agency under the Securities Exchange Act of 1934. Securities Exchange Act Release No. 26154, 53 FR 39556 (October 7, 1988).

On February 1, 1990, the Commission approved an ICC proposal to extend the ICC-OCC cross-margining pilot program through September 26, 1990. Also, on April 10, 1990, the SEC extended ICC's temporary registration status as a clearing agency until October 3, 1991. Securities Exchange Act Release No. 27879, 55 FR 13342.

⁴ The OCC has filed corresponding rule changes in connection with the ICC-OCC cross-margining system with the SEC. It is expected that in the near future the SEC will be publishing a Federal Register release soliciting comments on these OCC proposed cross-margining rule changes.

In this connection, on March 14, 1990 the ICC filed proposed rule changes with the Commission and the SEC which would permit ICC clearing members participating in the ICC-OCC cross-margining system to use common and preferred stocks and corporate bonds as margin with respect to their cross-margining accounts. The Commission requested public comment on this proposal in a Federal Register release published June 25, 1990. 55

II. Current Procedures of the CME-OCC and ICC-OCC Proprietary Cross-Margining Systems

Both the CME-OCC and ICC-OCC cross-margining systems currently permit a participating clearing member trading for its proprietary account to use a single margin payment to support related futures and option positions where price movements on the option component tend to be offset by price movements on the futures component. When combined, the intermarket position of a clearing member is margined on a combined portfolio basis and thus is subject to a lower original margin requirement than would be the case if each position were margined separately.

Status reports filed with the Commission by the CME and ICC indicate that clearing members participating respectively in the CME-OCC and ICC-OCC proprietary cross-margining systems generally have had substantial reductions in the total amount of margin they pay to carry cross-margined positions as compared to the amount of margin that would have been required at either the CME and OCC or the ICC and OCC separately in the absence of cross-margining. In fact, on a number of occasions clearing members have been assessed a margin requirement of \$0 for positions cleared through the CME-OCC and the ICC-OCC cross-margining systems.

The reduced margin level is designed to reflect more accurately the total risk of the clearing member's combined position. From the perspective of a participating clearing member, the primary benefit of proprietary cross-margining is that it decreases the cost of carrying certain linked positions. In addition, because positions linked under a proprietary cross-margining system should be a more stable financial asset than separate naked positions, banks may be more willing to finance cash flows due to clearing members holding such linked positions. Similarly, during periods of market volatility the cross-margining of linked positions is intended to decrease the need to liquidate the individual legs of such positions to meet margin calls and the drain on market liquidity that such forced liquidations could cause.

The CME-OCC and ICC-OCC proprietary cross-margining systems differ slightly in their operation. The CME-OCC system employs separate cross-margining accounts such that the positions in each cross-margining

account secure the obligations of the participant clearing member to the relevant clearing organization. CME and OCC exchange position information about the positions in their respective proprietary cross-margining accounts after each trading day. For such accounts, each clearing organization combines its positions with the positions carried at the other organization and separately processes the combined portfolio, affording spread margin treatment to those positions which have a leg in both markets.⁵ The margin amount calculated by each clearing organization for positions in the proprietary cross-margining accounts is reduced by 50 percent and the sum of the amounts carried at each clearing organization would constitute one margin requirement on a total cross-margined portfolio. Margin deposits, premium payments and settlement variation are held and/or flow through participant clearing members' accounts at mutually agreed upon settlement banks. By contrast, under the ICC-OCC cross-margining system, a clearing member of both the ICC and OCC who chooses to have certain of its ICC and OCC positions cross-margined by the ICC in accordance with the Intermarket Cross-Margining Agreement between the ICC and OCC is deemed to have assigned to ICC cross-margined option positions in its OCC house account. If such clearing member should default on its obligations to ICC, ICC would have exclusive control over those cross-margined positions and would have the right to liquidate them and to deposit the proceeds in the clearing member's liquidating settlement account for application in accordance with ICC's rules approved by the Commission and the SEC by virtue of their approval of the cross-margining arrangement.⁶

⁵ The CME has represented that its system's margining methodology is substantially similar to that of the OCC system. Both the CME and OCC use a variant of the Black-Scholes option price theory to assess what the value of a portfolio would be if certain changes in market conditions were to occur.

⁶ There is one further difference between the two systems. Under the CME-OCC cross-margining system, positions have to be cleared through either a firm which is a clearing member of both the CME and OCC, or a pair of affiliated firms, one of which is a clearing member at the CME and the other of which is a clearing member at the OCC. The present ICC-OCC cross-margining system, by comparison, is limited to those positions which are cleared through an individual firm which is a clearing member of both the ICC and OCC. The ICC, however, recently has submitted a proposal to the Commission which would expand ICC-OCC cross-margining eligibility to positions cleared through pairs of affiliated clearing members, thus replicating the approach taken by the CME-OCC cross-margining system. The Commission currently is reviewing that proposal.

FR 25362. The SEC published its request for comment on May 11, 1990. 55 FR 19819.

III. Proposed Expansion of the CME-OCC Cross-Margining System To Market Professional Positions

The CME-OCC cross-margining system, as presently constituted, is limited to the cross-margining of certain proprietary accounts maintained by participating clearing members. Under the CME's proposal, the CME-OCC cross-margining system would be expanded to include certain non-proprietary positions, specifically the positions of market professionals.

In several important respects, the proposed CME-OCC non-proprietary cross-margining system would function differently from the current CME-OCC proprietary cross-margining system. First, as noted, the proposal would expand cross-margining eligibility to include market professional positions. Second, while margin for each participating clearing member's market professional accounts ("X-M Non-Proprietary Accounts") would be calculated separately by CME and OCC based on the total portfolio of positions in these accounts at both clearing houses, it would not require that each market professional's position be an intermarket hedge. Finally, the proposed expansion of the CME-OCC cross-margining system would raise many novel and complex legal and regulatory issues relating to the segregation of customer funds and the distribution of funds upon a bankruptcy that were not raised by proprietary cross-margining. The following items particularly describe significant aspects of the proposed expansion of the CME-OCC cross-margining system to include market professional positions.

A. Eligibility

Under the CME's proposal, those market professionals eligible for CME-OCC cross-margining would be market-makers,⁷ specialists,⁸ or registered

⁷ Article I, section 1(u) of OCC's Bylaws defines a market-maker as "any member of an Exchange who is acting as a Market-Maker in an Exchange transaction pursuant to the Exchange Rules of such Exchange." Usually, an exchange appoints more than one market-maker to a particular option traded on the exchange. Each market-maker generally is required to contribute to the maintenance of a fair and orderly market and to compete with the other market-makers also assigned to that particular option.

⁸ Article I, section 1 (u) of OCC's Bylaws defines a specialist as "any member of an Exchange who is acting as a specialist, or group of members of an Exchange who are acting as a specialist unit, in an Exchange transaction pursuant to the Exchange Rules of such Exchange." Usually, an exchange appoints one specialist for a particular option traded on the exchange. With that exclusive appointment, the specialist generally is required to buy and sell a particular option for his own account with his own capital to offset temporary imbalances

traders,⁹ as those terms are defined in OCC's Rules, on a securities options market, or members of the CME, who actively traded for their own accounts both CME-cleared and OCC-cleared contracts that were eligible for cross-margining.¹⁰ The CME believes that because the above-referenced individuals actively trade such contracts for their own accounts, they could be expected to have sufficient intermarket activity to benefit from cross-margining. In fact, many market makers customarily use intermarket trading strategies to lessen the risks of their overall positions.

The trades of CME market professionals who would be eligible for cross-margining under the CME's proposal would generally be considered customer trades under Commission Regulation 1.3(k) and the Commission regulations implementing the segregation requirements of section 4d of the Act.¹¹ By contrast, under the

in supply and demand and thus add to the liquidity of the market for that option.

⁹ Article I, section 1 (jjj) of OCC's Bylaws defines a registered trader as: Any member of an Exchange which is acting as a registered trader in an Exchange transaction pursuant to the Exchange Rules of such Exchange and a plan with respect to floor trading activities filed by such Exchange [with the SEC pursuant to SEC Rule 11a-1], provided that the margin and net capital obligations applicable to such member in respect of such Exchange transaction under such Exchange Rules are the same as those applicable to Market-Makers or specialists under Exchange Rules.

Registered traders are another category of persons who are required to help maintain a fair and orderly market in their assigned option. They are not, however, required to make a constant market in their option—only when they either are actually present in the option's trading area or are requested to do so by the exchange during a specific period of time.

¹⁰ The CME-cleared contracts which would be eligible for non-proprietary cross-margining would be the CME's Standard & Poors ("S&P") 500 futures contract and option contract on the S&P 500 futures contract. The OCC-cleared contracts which would be eligible for non-proprietary cross-margining would be the Chicago Board Options Exchange's option contracts on the S&P 100 Index and the S&P 500 Index; the American Stock Exchange's option contracts on the Major Market Index and the Institutional Index; the New York Stock Exchange's ("NYSE") option contract on the NYSE Composite Index; and the Pacific Stock Exchange's option contract on the Financial News Composite Index.

¹¹ Commission Regulation 1.3(k) generally describes customer trades as any trade with the exclusion of trades done for a proprietary account as that term is defined by Commission Regulation 1.3(y). Commission Regulation 1.3(y) defines a proprietary account as a trading account carried on the books of an individual or organization for either (1) The individual or organization itself, (2) a person who holds an officer, director or management position, or significant ownership interest in the organization, or (3) an employee who conducts trading activity on behalf of the customers of the individual or organization.

current CME-OCC proprietary cross-margining system, cross-margining is available only for CME positions that qualify as "proprietary" under Commission Regulation 1.3(y).

B. Portfolio Margins

Under the CME's proposal, there would be one X-M Non-Proprietary Account at both the CME and OCC for each clearing member participating in the CME-OCC non-proprietary cross-margining system. Each X-M Non-Proprietary Account held by a clearing member would carry the cross-margined positions of all participating market professionals carried by the clearing member and cleared by the respective clearing house. In order to calculate margin for the X-M Non-Proprietary Account of each clearing member firm, both CME and OCC would evaluate the risk of the aggregate position of all the different participating market professionals to determine margin requirements.

CME has represented that it would not be practicable to establish a cross-margining system at the clearing level for market professional positions which would require that each participant's position represent an intermarket hedge or that they be linked in any way.¹² Instead, under the CME proposal, each clearing member's respective X-M Non-Proprietary Account at the CME and OCC could contain offsetting positions being held for the accounts of different principals (i.e., two or more separate market professionals). Therefore, CME's proposal is basically a netting arrangement whereby CME and OCC net the positions of different market professionals at the two clearing organizations for the purposes of determining margins.

Accordingly, because CME's proposal would not require that each participant market professional's position be an intermarket hedge position, there could be a potential risk that an X-M Non-Proprietary Account could become "unbalanced" because a participating market professional removed from the account (by exercise, close-out, transfer or expiration) the positions that offset the risk of his or another participant's positions. The proposal therefore, unlike proprietary cross-margining, is basically a netting arrangement which nets positions between markets for purposes of assessing margins. In other words, it

¹² Nonetheless, CME has indicated that it intends to permit clearing members to pass along the reduced margin levels of the cross-margining system to CME market professionals who participate in the system to the extent such market professionals actually carry hedged positions.

effectively nets positions between markets as if they were held at a single clearing institution.

The CME represents that under its non-proprietary cross-margining proposal it would employ a number of surveillance mechanisms to oversee the risks attendant to the offsetting of non-linked positions which may be different from the risks of hedge positions required under its proprietary cross-margining system. First, the participant market professional's clearing member, whose margin requirement would be affected by such an imbalance in an X-M Non-Proprietary Account, would, under the express terms of the agreement with participating market professionals, at all times retain the right to determine what positions could be held or maintained in the account. Thus, if an imbalance occurred or was expected by the clearing member's risk manager to occur, the clearing member would have the authority to transfer the unbalanced positions from the X-M Non-Proprietary Account to the appropriate non-cross-margin account at the clearing houses. In addition, the clearing member could have the discretion to deny a request by a participant market professional to transfer positions to, or clear positions in, the X-M Non-Proprietary Account.

Second, the current schedule of Super Margins used for accounts under the CME-OCC proprietary cross-margining system would be applied separately to X-M Non-Proprietary Accounts as well. Super Margin is a margin requirement for an account which is added as the account's Base Margin amount increases. The greater the Base Margin requirement, the greater the amount of Super Margin required. CME represents that because unbalanced positions in cross-margin accounts would increase the Base Margin requirement, the possible addition of Super Margin would discourage a clearing member from maintaining an unbalanced portfolio in its X-M Non-Proprietary Accounts. Thus, CME believes that the potential assessment of Super Margins to the X-M Non-Proprietary Accounts would provide clearing members with an incentive to exercise strict control over the positions in those accounts.

Finally, CME has stated that it would review the composition of the X-M Non-Proprietary Accounts in the course of performing its own daily risk-management functions, as it currently does for the accounts of all its clearing members. In view of the fact that non-proprietary positions subject to cross-margining would not be required to be part of a linked intermarket hedge, the

CME points out that it would be able, at its discretion, to require additional margin with respect to a clearing member's X-M Non-Proprietary Accounts in appropriate circumstances. In addition, the CME contends that the other risk-management tools currently available to it (e.g., increased capital requirements, increased security deposits) could be used with respect to clearing members carrying X-M Non-Proprietary Accounts.

Participant's Agreement

Under CME's proposal, each clearing member which wanted to participate in the CME-OCC non-proprietary cross-margining system would be required to execute a Non-Proprietary Cross-Margin Account Agreement and Security Agreement with both the CME and OCC. Additionally, each market professional who wanted to have its positions cross-margined under the proposed system would have to execute a Subordination Agreement for CME-OCC Cross-Margining with its carrying Joint Clearing Member or Affiliated Clearing Members. Prior to commencing to clear a given market professional's positions in the X-M Non-Proprietary Account, the participating clearing member also would have to provide its Designated Clearing Organization¹³ with a copy of the executed Subordination Agreement and a financing statement reflecting the CME and OCC's joint lien on the market professional's cross-margined positions and margin.

Under the CME's proposed Subordination Agreement, a market professional participating in the CME-OCC cross-margining system would agree to certain provisions that would be required in order to effectuate cross-margining within the structure of the Commission's segregation regulations and the Commission's and the Securities Investor Protection Corporation's provisions for disposition of customer property in the event of the bankruptcy of a futures commission merchant or broker-dealer, respectively.

Under the proposed expansion of the CME-OCC cross-margining system to market professional positions, the

¹³ Under the current CME-OCC proprietary cross-margining system and the proposed CME-OCC non-proprietary cross-margining system, each Joint Clearing Member and each pair of Affiliated Clearing Members would have to designate either the CME or the OCC as its "Designated Clearing Organization." The Designated Clearing Organization would provide the Joint Clearing Member or pair of Affiliated Clearing Members with a daily Margin and Settlement Report and perform settlement functions on behalf of itself and the other clearing organization in connection with the X-M Accounts.

securities and commodities positions of participating professionals would be treated as a combined portfolio in determining margin requirements, and the margin deposited would be held jointly by CME and OCC as margin for the professionals' combined positions. In addition, since the positions of all participating market professionals would be commingled in the X-M Non-Proprietary Accounts, gains from the positions of one market professional could offset losses from the positions of another market professional. Thus, the CME-OCC non-proprietary cross-margining system would require that a participating clearing member be able to use margin deposits not only to margin futures positions in its CME X-M Non-Proprietary Account, but also to margin short positions in securities options held in its OCC X-M Non-proprietary Account. CME contends that it would be impossible to allocate any margin deposit between securities and commodities positions because the real security for each obligation included in its X-M Non-Proprietary Accounts (i.e., futures positions and short options positions) would consist not only of margin collateral, but also of an offsetting, though not necessarily related, position on the other side of the market.

Accordingly, the CME's proposed Subordination Agreement would require a participating market professional to agree that his property could be used by his clearing member(s) to carry securities option positions and futures and futures option positions in the X-M Non-Proprietary Accounts on behalf of the professional and other professionals whose positions were carried in those accounts. In addition, under the proposed Subordination Agreement the market professional would waive expressly the provisions of certain Commission regulations to the extent that they would otherwise prohibit commodity customer funds from being obligated to purchase, margin, secure, settle or otherwise carry customer transactions in securities options (see, e.g., Regulations 1.20(a), 1.22 and 1.24).¹⁴

CME contends that these provisions would not affect the status of the market professionals' commodities-related funds as customer funds, and all money, securities and property received by the

¹⁴ The types of market professionals who would be eligible for cross-margining under the CME proposal would be considered "customers" under Commission Regulation 1.3(k). Therefore, such market professionals' accounts normally would be subject to all of the restrictions of Regulation 1.20 through 1.30 regarding the handling of customer money, securities and property.

clearing member from the market professional in respect of cross-margined positions would remain segregated as required by law. In addition, the CME argues that because the X-M Non-Proprietary Cross-Margined Account would be separate from the non-cross-margin customers' accounts of the clearing member at CME and OCC, public customers would be protected against any losses which could arise from the cross-margined positions of market professionals.

The CME's proposed Subordination Agreement also would address the issue of distribution of customer funds under part 190 of the Commission's Regulations and the Securities Investors Protection Act of 1970 ("SIPA") 15 U.S.C. 78aaa *et seq.* Under the Subordination Agreement the participant market professional would agree that, in the event of his clearing member's bankruptcy, any cross-margin-related claims that such a professional may have against the member would be subordinated to the claims of all customers, including the market professional himself, with respect to non-cross-margined positions. The professional also would agree that all of his assets carried in the X-M Non-Proprietary Account, including securities options, would not be deemed to be "customer property" for the purposes of the SIPA.

The CME believes that its proposed Subordination Agreement would insulate non-cross-margining customers from cross-margin-related risks and also would address the issue of potentially conflicting schemes for distribution of customer funds under part 190 of the Commission's Regulations and SIPA. CME argues that an individual would not be a "customer" under section 16(2) of SIPA, and his assets would not be considered "customer property" under section 746(b) of the Bankruptcy Code, if he were to subordinate his claim, by contract, to the claims of other creditors of the debtor. Accordingly, CME contends that a market professional who agrees to subordinate his claims to all other customers pursuant to the proposed Subordination Agreement would remove himself from the class of customers whose claims are disposed of pursuant to SIPA. To reinforce this point, under the proposed Subordination Agreement, a participating market professional would not only take himself out of the class of customers whose claims are disposed of pursuant to SIPA, but he also would be expressly agreeing that all of his assets (including securities options) carried in the X-M Non-Proprietary Accounts would not be

deemed to be "customer property" for the purposes of SIPA. CME argues that these provisions would eliminate the possibility that assets in a cross-margining account, which constitute "customer property" for the purposes of part 190 of the Commission Regulations and the commodity broker liquidation provisions of the Bankruptcy Code, would be subject to two potentially conflicting schemes of distribution.

D. Settlement Procedures

The settlement procedures of the CME and OCC differ with regard to the time that each clearing organization guarantees transactions submitted for clearing.¹⁵ Specifically, the CME guarantees trades when matched at either one of the CME's four intra-day matching sessions or at the final matching session of approximately 9:30 p.m. on the date of the trade. OCC guarantees option trades three hours after settlement time—which for cross-margining would occur at 9:40 a.m. of the business day after the trade date. This discrepancy in CME and OCC trade guarantee times could lead to the OCC not guaranteeing an OCC trade which already had been cross-margined under the CME-OCC cross-margining settlement procedures. In approving the CME-OCC proprietary cross-margining system, the Commission conditioned its approval upon an OCC commitment that any OCC position that has been given cross-margined treatment would not be rejected by the OCC without the consent of the CME. The CME proposes to adopt this same procedure for CME-OCC non-proprietary cross-margining.

IV. Proposed Expansion of the ICC-OCC Cross-Margining System to Market Professional Positions

Under the current ICC-OCC proprietary cross-margining system, a participating clearing member only receives cross-margining treatment for positions in the member's account which are being carried for the firm itself. Like the CME, the ICC proposes to expand the ICC-OCC cross margining system to include certain non-proprietary positions, specifically the positions of market professionals. As with the CME's similar proposal, however, the proposed expansion of the ICC-OCC cross-margining system would raise several novel and complex legal and regulatory issues relating to the segregation of

¹⁵ Upon a clearing organization's guarantee of a transaction, the organization interposes itself on the side of the transaction opposite that of the submitting party and thus assures performance on each transaction.

customer funds and the distribution of funds upon a bankruptcy.

The following items particularly describe important aspects of the proposed expansion of the ICC-OCC cross-margining systems to include market professional positions.

A. Eligibility

Under the ICC's proposal, the type of market professional accounts eligible for ICC-OCC cross-margining would include combined or separate market-maker accounts,¹⁶ combined or separate specialist accounts,¹⁷ registered trader accounts, stock market-maker accounts and stock specialist accounts at the OCC and separate customer floor trader¹⁸ or off-floor trader accounts¹⁹ as provided for in ICC's rules.

By contrast, under the current ICC-OCC proprietary cross-margining system, a participating clearing member may only receive cross-margining treatment for its "house" accounts (i.e., positions carried in a member's account for the member itself).²⁰

B. Portfolio Margins

The proposed ICC-OCC non-proprietary cross-margining system, unlike the CME-OCC system, would not use special cross-margining accounts. Rather, a clearing member could elect to have cross-margining treatment for any one or more of such pairs of eligible market professional accounts. Positions in eligible contracts carried in a market professional account at OCC would be treated for purposes of calculating margin as if they were carried in the corresponding market professional account at ICC. In the case of the combined market-makers, or specialists' account of a clearing member at OCC, the "corresponding" account at ICC would be the combined floor traders'

¹⁶ Article VI, Section 3(c) of OCC's Bylaws permits two or more market-makers to establish a single combined market-maker account at the OCC in which the positions of the participant market-makers may be commingled.

¹⁷ Article VI, section 3(c) of OCC's Bylaws permits two or more specialists to establish a single combined specialist account at the OCC in which the positions of the participant specialists may be commingled.

¹⁸ Under ICC Rule 402(c), a separate customer floor trader's account is defined as any floor trader account with a clearing member in which the floor trader is not the clearing member himself or a non-customer of the clearing member.

¹⁹ Under ICC Rule 402(e), an off-floor trader account is defined to mean the account of a customer who owns an exchange membership and has entered into an off-floor trader's account agreement with a clearing member.

²⁰ Thus, a proprietary account which contains the positions of a "non-customer" such as a partner, officer or employee of a clearing member is not eligible for ICC-OCC proprietary cross-margining.

account of that clearing member (or its affiliated ICC clearing member). In the case of a separate market-maker's account at OCC, the corresponding account at ICC would be the individual floor trader's or off-floor trader's account carried on behalf of the same market professional.

As with CME's proposal, the ICC's proposal to expand the ICC-OCC cross-margining system to include market professional positions would not require that each market professional's position represent an intermarket hedge or that they be linked in any way. Instead, the ICC-OCC system would assess margin for each clearing member based upon the risk of the aggregate positions that clearing member is carrying on behalf of participating market professionals. Therefore, ICC's proposal is basically a netting arrangement whereby ICC and OCC net the positions of different market professionals at the two clearing organizations for the purposes of determining margins. Accordingly, because each participant market professional's position would not have to be an intermarket hedge position, there could be a potential risk that the overall position carried by a clearing member on behalf of market professionals could become "unbalanced" because a participating market professional, by exercise, close-out, transfer or expiration, changed a position that offset the risk of his or another participant's positions.

Unlike the CME proposal, however, the ICC-OCC proposal would not use any special mechanism to oversee the risks attendant to margining based upon the offsetting of non-linked positions. Rather, ICC represents that it would rely on its already established risk-management tools, such as increasing margins, capital requirements or security deposits, to address the risk of unbalanced market professional positions.

C. Participants' Agreement

Under the ICC's proposal, any market professional who wanted his positions to be included in an account for which the carrying clearing member had elected cross-margining would be required to execute a Notice of Election and Agreement ("Notice of Election"). The ICC's proposed Notice of Election would similarly treat each of the issues addressed by the CME in its proposed Subordination Agreement.

Under ICC's proposed Notice of Election, a participating market professional would agree that his property could be used by his clearing member to carry securities option positions and futures and futures option

positions in the cross-margined accounts on behalf of the professional and other professionals whose positions were carried in those accounts. Also, the market professional would waive expressly the provisions of the Commission's regulations, including, but not limited to, Regulations 1.20(a), 1.22 and 1.24, but only to the extent that such Regulations would otherwise prohibit commodity customer funds from being obligated to purchase, margin, secure, settle or otherwise carry customer transactions in securities options.²¹

The ICC contends that its proposed use of a Notice of Election is necessary because participating clearing members would be using margin deposits to margin not only futures positions but short positions in securities options as well. Notably, under the ICC's proposed Notice of Election, property received by clearing members from market professionals electing cross-margining treatment would continue to be considered customer property under section 4d(2) of the Act, subject to disposition as customer property to the extent any surplus existed in such account, regardless of any waiver of protections under the Commission's regulations.

The ICC's proposed Notice of Election also would address the issue of distribution of customer funds under part 190 of the Commission's regulations and SIPA in a manner similar to the CME's proposed Subordination Agreement. Under the ICC proposal, a cross-margining market professional would agree that in the event of the bankruptcy or liquidation of the clearing member through which the professional cleared his cross-margined positions, any of his cross-margin related claims against the clearing member would be subordinated to the claims of non-cross-margining customers. The ICC contends that by so agreeing to subordination to public customers, a market professional should be excluded from the definition of a securities "customer" in Section 16(2) of SIPA and his money, securities and other property held in his clearing member's cross-margining account would not constitute securities "customer property" under section 746(b) of the Bankruptcy Code, which is applicable to broker-dealer liquidations. Additionally, under ICC's proposed

²¹ As with CME's proposal, the types of market professionals who would be eligible for cross-margining under the ICC proposal would be considered "customers" under Commission Regulation 1.3(k). Therefore, such market professionals' accounts normally would be subject to all of the restrictions of Regulation 1.20 through 1.30 regarding the handling of customer money, securities and property.

Notice of Election, a participating market professional would agree expressly that all of his money, securities and other property would not be deemed to be "customer property" for the purposes of SIPA. The ICC believes that these requirements would avoid the possibility that some or all of the money, securities and other property in a cross-margining account might become subject to two potentially conflicting schemes of distribution under the Bankruptcy Code or SIPA because such accounts would be handled by agreement under the provisions for liquidation of commodity brokers.

V. Request for Comments

The Commission requests comments on any aspect of the proposals that members of the public believe may raise issues under the Commodity Exchange Act or the Commission's regulations.

In particular, the Commission requests comment on the following matters:

1. Whether the portfolio margining systems used by the CME, OCC, and ICC would assess margin at prudential levels for the cross-margined positions of market professionals;
2. Whether in cases where portfolio margining systems assess zero margin, sufficient account is taken of the potential basis risk involved in liquidating positions in different markets;
3. Whether any risk created by the discrepancy in CME and OCC trade guarantee times is adequately addressed by the OCC pledge to not reject any cross-margined transaction without the consent of the CME;
4. Whether undue risk would be created by permitting positions of different market professionals to be offset for cross-margining purposes in the same account;
5. Whether the absence of any special procedures under the ICC-OCC proposal to monitor for unbalanced market professional positions would create any undue risk to the proposed ICC-OCC non-proprietary cross-margining system;
6. Whether it would be consistent with the Act to permit market professionals to waive the provisions of Commission Regulations 1.20, 1.22, and 1.24 to the extent provided;
7. Whether the CME's proposed subordination agreement or the ICC's proposed Notice of Election would effectively accomplish their respective stated purpose of avoiding potentially conflicting schemes for the distribution of customer funds in the event of a futures commission merchant/broker dealer insolvency; and

8. Whether the CME's proposed subordination agreement or the ICC's proposed Notice of Election would provide sufficient notice to participant market professionals of their rights and obligations under the respective CME-OCC and ICC-OCC non-proprietary cross-margining systems.

Copies of the proposals, amendments to various cross-margining agreements and other information relevant to the separate proposals of the CME and ICC such as examples provided by the CME illustrating various insolvency scenarios, would be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, except to the extent that any of the submissions may be entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 254-6314.

Any person interested in submitting written data, views or arguments on either the proposed expansion of the CME-OCC or the ICC-OCC cross-margining system, on any of the proposed amendments to rules or cross-margining agreements related to those expansions, or with respect to other materials submitted by either the CME or ICC in support of their respective submissions, should send such comments to Jean A. Webb, Secretary, Washington, D.C. 20581, by the specified date.

Issued in Washington, DC on July 24, 1990.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-17610 Filed 7-27-90; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Proposed Municipal Water Supply Intake To Be Constructed by Henrico County in the James River in Henrico County, VA

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

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for the proposed municipal water supply intake.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and DEIS can be answered by: Bob Hume, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510, (804) 441-7657.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Henrico County proposes to construct a municipal water supply intake in the James River to supply its future needs. By the year 2010 the County would be withdrawing an average of approximately 34 million gallons per day (mgd) with peak withdrawals of 55 mgd. In addition, some access road and pipeline construction will probably be required in wetlands, but the extent of such impacts is currently unknown. These activities require a Corps of Engineers permit pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and/or section 404 of the Clean Water Act (Pub. L. 95-217).

2. Alternatives

Almost all of Henrico County's existing municipal water supply is obtained from the City of Richmond, which withdraws from the James River. Richmond indicates that it currently has (or will shortly have) enough excess treatment capacity to meet its future water needs as well as those of Henrico County. The County has indicated that it would continue to obtain water from the City if it does not receive the necessary permits for the proposed intake, and the City has indicated its willingness to continue to supply the County. This being the case, it would not appear that there are any reasonable alternative water supplies other than these, and the detailed investigation of any such presently seems to be pointless. Alternative construction and access methods which would minimize or eliminate wetland impacts will be evaluated.

3. Scoping Process

Several prescoping meetings have been held to date with Federal, State, and local agency representatives. The principal issue identified so far deals with instream flows. As part of the Environmental Impact Statement, the Corps has directed the County to perform an Instream Flow Incremental Methodology (IFIM) analysis to ascertain the effects of its proposed withdrawal (along with existing withdrawals) on the aquatic habitat and recreational usage of the river. If the results of the IFIM study show unacceptable adverse impacts, the Corps could condition or deny the

County's permit and/or place conditions on the existing withdrawals.

4. Public Scoping Meeting

Because of the numerous pre-scoping meetings held with Federal, State, and local representatives, no additional scoping meetings are anticipated. Since there has been no opportunity for public input so far, though, a public notice and pertinent maps are being sent to adjacent property owners, newspapers having circulation in the area, and individuals and organizations having previously asked to receive copies of Corps public notices. Written comments on the scope of the Draft EIS will be accepted from any interested agency, organization, or individual through August 20, 1990.

5. DEIS Availability

It is estimated that the DEIS will be available to the public for review and comment in the summer of 1991.

Dated: July 16, 1990.

J.J. Thomas,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-17646 Filed 7-27-90; 8:45 am]

BILLING CODE 3710-EN-M

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Municipal Water Supply Proposed by the City of Newport News in Eastern Virginia

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

ACTION: Notice of intent.

SUMMARY: An Environmental Impact Statement will be prepared to evaluate environmental impacts, project alternatives, and other public interest review factors for a proposed municipal raw water supply.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and DEIS can be answered by: Bob Hume, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510, (804) 441-7657.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The City of Newport News, acting on behalf of a group of municipalities known as the Peninsula Raw Water Study Group, is trying to develop a regional water supply to meet future short- and long-term needs. These activities require a Corps of Engineers permit pursuant to section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and/or section 404 of the Clean Water Act (Pub. L. 95-217).

2. Alternatives

Alternatives which will be investigated include, but will not be limited to, reservoir site alternatives, direct withdrawal alternatives, groundwater, conservation, and no project.

3. Scoping Process

Several prescoping meetings have been held to date with Federal, State, and local agency representatives. Some of the alternatives developed during this prescoping period include groundwater (expansion of existing sources and/or desalting), expanding the existing Chickahominy River withdrawal, system interconnection with the proposed Ware Creek Reservoir, a reservoir on Cohoke Creek with a Mattaponi River pumpover, use of the oligohaline portion of the James River for desalting, and a reservoir on the Appomattox River above Lake Chesdin. The public scoping process may add to or subtract from this list.

4. Public Scoping Meeting

There is not presently a preferred alternative, and the alternative sites cover a significant portion of eastern Virginia. A single public scoping meeting would be impracticable, and meetings near each of the sites presently being proposed would be onerous and strain Norfolk District's resources. The District staff has had extensive experience dealing with water supply projects in recent years, including several public scoping meetings for other water supply projects. This knowledge base will be used to generate the basic scope, and mass mailings will be made throughout the affected region of a public notice soliciting written public scoping comments. Written comments on the scope of the Draft EIS will be accepted from any interested agency, organization, or individual through August 20, 1990.

5. DEIS Availability

It is estimated that the DEIS will be available to the public for review and comment in the spring of 1991.

Dated: July 16, 1990.

J.J. Thomas,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-17647 Filed 7-27-90; 8:45 am]

BILLING CODE 3710-EN-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before August 29, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos (202) 732-2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these, requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision extension, existing or reinstatement; (2) Title (3) Frequency of collections; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: July 24, 1990.

George P. Sotos,
Acting Director, for Office of Information Resources Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Grant Application for RSA Programs.

Frequency: Annually.

Affected Public: State or local governments; Businesses or other for-profit; Non-profit organizations.

Reporting Burden:

Responses: 12000.

Burden Hours: 48000.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the RSA Programs. The Department uses the information to make grant awards.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Continuation Application for the Follow Through Program.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden:

Responses: 63.

Burden Hours: 315.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Follow Through Program. The Department uses the information to make grant awards.

Office of Planning of Budget, and Evaluation

Type of Review: New.

Title: Even Start Evaluation.

Frequency: Semi-Annually.

Affected Public: Individuals or households; State or local governments.

Reporting Burden:

Responses: 73.

Burden Hours: 1241.

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This study, which responds to evaluation requirements in the Even Start authorizing legislation, will assess the effectiveness of the Even Start Program. Local projects will collect data on participating families and state agencies. The Department

uses this information to report to Congress.

Office of Postsecondary Education

Type of Review: Revision.
Title: Financial Report for the Endowment Challenge Grant Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden:
 Responses: 265.
Burden Hours: 265.
Recordkeeping Burden:
Recordkeepers: 265.
Burden Hours: 530
Abstract: This form will be used by Non-profit institutions to apply for funding under the Endowment Challenge Grant Program. The Department uses the information to make grant awards.

[FR Doc. 90-17616 Filed 7-27-90; 8:45 am]
 BILLING CODE 4000-01-M

[CFDA Nos. 84.016 and 84.153]

Undergraduate International Studies and Foreign Language Program and the Business and International Education Program; Applications

AGENCY: Department of Education.

ACTION: Combined Notice Inviting Applications for Fiscal Year 1991 New Awards under the Undergraduate International Studies and Foreign Language Program and the Business and International Education Program.

PURPOSE: Applications are invited for new awards for Fiscal Year 1991 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program (34 CFR part 658) and the Business and International Education Program (34 CFR part 661).

The Undergraduate International Studies and Foreign Language Program provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

The Business and International Education Program provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

DEADLINES FOR TRANSMITTAL OF APPLICATIONS:

For the Undergraduate International Studies and Foreign Language Program—*November 5, 1990*, and
 For the Business and International Education Program—*November 8, 1990*.

DEADLINES FOR INTERGOVERNMENTAL REVIEW:

For the Undergraduate International Studies and Foreign Language Program—*January 4, 1991*, and
 For the Business and International Education Program—*January 7, 1991*.

APPLICATIONS AVAILABLE: September 7, 1990.

ELIGIBLE APPLICANTS: For the Undergraduate International Studies and Foreign Language Program, eligible applicants are institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

For the Business and International Education Program, eligible applicants are institutions of higher education.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA No.	Available funds	Estimated range of awards	Estimated size of awards	Estimated No. of awards	Project period in months
Undergraduate International Studies and Foreign Language Program (CFDA No. 84.016)	\$1,450,000	\$30,000 to \$75,000	\$53,000	27	24 to 36
Business and International Education Program (CFDA No. 84.153).....	\$1,315,000	\$40,000 to \$100,000	\$73,000	20	24

APPLICABLE REGULATIONS: (a) Undergraduate International Studies and Foreign Language Program, 34 CFR Parts 655 and 658; (b) Business and International Education Program, 34 CFR Parts 655 and 661; and (c) Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 82 and 85.

FOR APPLICATIONS OR INFORMATION CONTACT: Christine Corey (Undergraduate International Studies and Foreign Language Program), Telephone (202) 708-9293 or (202) 708-7283, and Susanna C. Easton (Business and International Education Program), Telephone: (202) 708-8764 or (202) 708-7283, U.S. Department of Education, 400 Maryland Avenue SW., Room 3053, ROB-3, Washington, D.C. 20202-5332.

Authority: Undergraduate International Studies and Foreign Language Program (20 U.S.C. 1124); Business and International Education Program (20 U.S.C. 1130-1130b).

Dated: July 20, 1990.
Leonard L. Haynes III,
Assistant Secretary for Postsecondary Education.
 [FR Doc. 90-17617 Filed 7-27-90; 8:45 am]
 BILLING CODE 4000-01-M

Office of Postsecondary Education

Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.
ACTION: Notice of Closing Date for Filing the Fiscal Operations Report and Application To Participate in the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for

fiscal year 1991 funds—for use in the 1991-92 award year—under the Perkins Loan, CWS and SEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Perkins Loan, CWS and SEOG programs through a separate notice in the **Federal Register**.

The Secretary further gives notice that an institution that had a Perkins Loan fund or expended CWS or SEOG funds during the 1989-90 award year is required to report its program expenditures as of June 30, 1990, to the Secretary.

The Perkins Loan, CWS, and SEOG programs are authorized by Parts E, C, and Part A Subpart 2, respectively, of

title IV of the Higher Education Act of 1965, as amended.

Authority: (20 U.S.C. 1087aa-1087ii; 42 U.S.C. 2751-2756b; and 20 U.S.C. 1070b-1070b-3.)

Closing Date: An institution may submit its 1989-90 Fiscal Operations Report and 1991-92 Application to Participate in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs (FISAP-ED FORM 646-1; OMB No. 1840-0073) by—

- (1) Submitting the completed data cells on a data diskette provided by the Department of Education;
- (2) Creating a tape from data stored in a pre-defined format on a mainframe computer, and submitting that tape;
- (3) Transmitting the data from a personal or mainframe computer through a modem; or
- (4) Submitting the completed data cells on the paper form (ED Form 646-1) if the institution is a first-time applicant for 1991-92, or has received a waiver from the Department of Education to file a paper FISAP in lieu of an electronic FISAP. For a continuing institution that wishes to obtain a waiver from the Department of Education allowing for the filing of a paper FISAP in lieu of an electronic FISAP, an institution had to have submitted the required information to the Systems Management Section, Division of Program Operations and Systems no later than June 1, 1990.

To ensure consideration for 1991-92 funds:

- (1) An institution that has been given permission by the Department of Education to submit a paper FISAP must submit it by September 7, 1990.
 - (2) An institution that is submitting an electronic FISAP either by data diskette, tape, or modem, must submit it by September 28, 1990.
- FISAPs Delivered by Mail:** A diskette or tape containing FISAP data, or a paper FISAP, must be addressed to FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910. An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark,

or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAPs Delivered by Hand: A diskette or tape containing FISAP data, or a paper FISAP, must be taken to Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland.

Hand-delivered FISAPs, diskettes, or tapes will be accepted between 9 a.m. and 5 p.m. daily [Eastern Daylight Time], except Saturdays, Sundays, and Federal holidays. A FISAP that is hand-delivered will not be accepted after 5 p.m. on the closing date.

FISAPs Delivered Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, one original completed signature page from ED Form 646-1 must be submitted under separate cover to Electronic FISAP, c/o Data Transformation Corporation, 8121 Georgia Avenue—Suite 300, Silver Spring, Maryland 20910, by September 28, 1990.

FISAP Information: FISAPs were mailed by the Campus-Based Programs Branch in late July. An institution must prepare and submit its FISAP in accordance with the instructions included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs: Perkins Loan—34 CFR parts 674 and 678. College Work-Study—34 CFR parts 675 and 668. Supplemental Educational Opportunity Grant—34 CFR parts 676 and 668.

Further Information: For further information or to request a FISAP form, contact Ms. Gloria Easter, Chief, Financial Management Section, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4621, ROB-3), Washington, DC. 20202-5452. Telephone (202) 708-7741.

Authority: (20 U.S.C. 1087aa et. seq.; 42 U.S.C. 2751 et seq.; and 20 U.S.C. 107b et seq.)

Dated: July 20, 1990.

(Catalog of Federal Domestic Assistance Nos. 84.038, Perkins Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Leonard L. Haynes III,
Assistant Secretary for Postsecondary
Education.

[FR Doc. 90-17618 Filed 7-27-90; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[Docket No. PP-91]

Intent To Prepare an Environmental Impact Statement and To Conduct Additional Public Scoping Meetings: Puget Sound Power & Light Co.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of intent by the Department of Energy (DOE) to prepare an environmental impact statement (EIS) and to hold additional public scoping meetings to assess the environmental effects of the issuance of a Presidential permit for the construction and operation of an electric transmission line crossing the U.S. international border.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the DOE announces its intention to prepare an EIS and to conduct public scoping meetings. These public scoping meetings are in addition to the meetings held on January 29th and 30th, 1990 (55 FR 57). This EIS will be prepared to assess the environmental impacts of a proposed DOE action to grant (with terms and conditions) or to deny a Presidential permit authorizing Puget Sound Power & Light Company (Puget Power) to construct, connect, operate and maintain at the international border between the United States and Canada new facilities for the transmission of electric energy.

Written comments should be addressed to:

Ellen Russell, Office of Fuels Programs (FE-52), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-9624.

For general information on the EIS process contact:

Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4600.

Angela Foster, Office of General Counsel (GC-11), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6947.

DATES: The public scoping meetings will be convened at 7 p.m. on Tuesday, August 21, 1990, at Nendels Motor Inn, 714 Lakeway Drive, Bellingham, Washington; at 7 p.m. on Wednesday, August 22, 1990, at the American Legion Hall, 134 Harrison Avenue, Sumas, Washington, and at 7 p.m. on Thursday, August 23, 1990, at the Sedro Woolley Community Center, 720 State Street, Sedro Woolley, Washington.

Written comments, or documents submitted in support of oral statements presented at the public scoping meetings will be accepted for consideration in preparing the EIS until September 14, 1990.

SUPPLEMENTARY INFORMATION: On May 31, 1989, Puget Power applied to the Office of Fuels Programs (OFP), Fossil Energy, pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the international border between the U.S. and Canada. This application has been docketed as PP-91. Puget Power's proposed project is scheduled for service by December 1992 and would consist of the construction of two 23-mile, 230-kilovolt, overhead electric transmission lines which would cross the U.S.-Canadian border near Lynden, Washington. One line would terminate at Puget Power's existing Bellingham, Washington, substation; the second line would interconnect with existing Puget Power transmission lines two miles south of the Bellingham substation. The proposed facilities would interconnect at the U.S.-Canadian border with similar facilities to be constructed by the British Columbia Hydro and Power Authority (B.C. Hydro).

In order to construct the proposed facilities, Puget Power must acquire approximately 16 miles of 160-foot wide right-of-way to accommodate a double row of wooden "H-frame" support structures. The additional seven miles will be supported by single wood poles utilizing both existing public and private rights-of-way and rights-of-way yet to be purchased.

According to the applicant, the proposed interconnection is intended to relieve local transmission deficiencies and to provide a reliable electric system under both normal and peak loading conditions during all seasons. Puget Power also asserts that the proposed intertie would provide a new path for

power transactions between B.C. Hydro and Puget Power, thus reducing the need for and the impact of new generation resources.

The DOE has determined that the issuance of a Presidential permit to Puget Power for the proposed facilities would constitute a major federal action significantly affecting the quality of the human environment. Consequently, pursuant to the provisions of the NEPA, an EIS will be prepared to assess the impact of the proposed action on the environment.

On January 2, 1990, the DOE published a notice in the Federal Register (55 FR 57) announcing its intent to prepare an EIS and to conduct public scoping meetings in connection with Puget Power's Presidential permit application. Public scoping meetings on this matter were held in Lynden, Washington, on January 29, 1990, and in Bellingham, Washington, on January 30, 1990. As a result of comments received during those meetings, the DOE determined that Puget Power's planned rebuild of an existing 115-kV transmission line to 230-kV in order to interconnect with one of its proposed international 230-kV transmission facilities should be included in its environmental review. This proposed rebuild extends approximately 23 miles from Puget Power's existing Sedro-Woolley substation to its Bellingham substation. Accordingly, on March 9, 1990, (55 FR 8976) OFP published a notice in the Federal Register broadening the scope of the environmental review and extending until June 4, 1990, the period of time during which it would accept comments on the scope of the EIS.

On June 22, 1990, Puget Power amended its Presidential permit application to include an alternate border crossing location at Sumas, Washington, approximately seven (7) miles east of Puget Power's preferred border crossing at Lynden, Washington. (Please see the associated maps.) Comments on the environmental issues associated with the alternate border crossing also are solicited at this time.

Interested agencies, organizations, and members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and are encouraged to attend the public scoping meetings which will be held on August 21, 1990, at Nendels Motor Inn in Bellingham, Washington, on August 22, 1990 at the American Legion Hall in Sumas, Washington, and on August 23, 1990, at the Sedro Woolley Community Center in Sedro Woolley, Washington.

Parties who desire to present oral comments at the scoping meetings should provide advanced notice to the DOE as described below under "COMMENTS AND SCOPING MEETINGS." Upon completion of the draft EIS, its availability will be announced in the Federal Register, at which time further comments will be solicited.

Preliminary Definition of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS. As background for public comment and suggestions, it is useful to list those environmental issues which have been tentatively identified for analysis and assessment in the EIS. This list is not intended to be all inclusive nor to imply any predetermination of impacts.

Additional issues for analysis may be identified as a result of public comment.

A. Environmental Issues Associated With Transmission Line Construction

- (1) The loss or modification of upland plant communities due to the permanent removal of all tall-growing vegetation from proposed rights-of-way, and of all vegetation from tower footings, access roads, and substation sites;
- (2) Minor relocations and alterations to other existing facilities along proposed rights-of-way;
- (3) Temporary disruption of wildlife communities, agricultural production, and other land uses along the line route during actual construction;
- (4) Potential long-term effects on wildlife communities from loss and modification of habitat;
- (5) Temporary interference with aquatic life during construction at stream and river crossings;
- (6) Potential long-term effects to aquatic resources from erosion and sedimentation and clearing of riparian vegetation;
- (7) Temporary socioeconomic perturbations due to the influx of construction workers into sparsely populated areas;
- (8) Temporary noise and air pollution resulting from operation of construction equipment and from burning of slash from clearing of rights-of-way;
- (9) Distruption and displacement of soils during activities associated with land clearing; and
- (10) Potential disturbance and contamination of ground water.

B. Environmental Issues Associated With Transmission Line Operation and Maintenance

(1) Long-term withdrawal of traditional land use (e.g., forest, agriculture, residential) within rights-of-way and land required for other project facilities;

(2) Periodic interference with plant and wildlife communities along rights-of-way due to required maintenance activities, particularly vegetation control;

(3) Generation of acoustic noise and electromagnetic interference with radio and television reception along rights-of-way;

(4) Possible biological effects such as reduced growth or viability for plant and animal species resident within or in proximity of rights-of-way;

(5) Possible health effects from periodic and/or prolonged exposure to electric and magnetic fields produced by alternating current transmission;

(6) Possible long-term effects on public health and aquatic and terrestrial organisms due to the use of herbicides for vegetation control along rights-of-way;

(7) Indirect ecological and socioeconomic effects resulting from easier unauthorized human access to some areas via access roads and rights-of-way, such as increased hunting or use by motorcycles or snowmobiles;

(8) Long-term visual impacts resulting from the presence of support towers, conductors, and other project facilities.

C. Other Specific Environmental Issues

(1) The possibility of affecting threatened or endangered species or critical habitats for such species;

(2) Identification and review of alternatives to construction within a 100-year floodplain or identified wetlands and identification and review of mitigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) Possible direct and adverse effects on the values for which a wild, scenic or recreational river was established;

(4) Environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge of dredge or fill materials into any waters of the U.S.;

(5) Actions having an impact on the continued use and viability of prime and unique farmlands;

(6) Possible effect of sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or on

historical, architectural or archeological sites of national significance; and
(7) Possible adverse impacts on National Forest lands.

Preliminary Definition of Alternatives

One of the major purposes of an EIS is to define the reasonable alternatives to the proposed action and the environmental impacts to be expected from each reasonable alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, the board classes of alternatives which have been tentatively identified are described briefly below:

A. If the Presidential Permit is Issued

Issuance of the Presidential permit by the DOE is one of the necessary steps leading to the construction of an electric transmission line which crosses the U.S. international border. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed. Alternate means of completing the project would be assessed (see mitigation alternatives below).

B. If the Presidential Permit is Denied

Denial of the Presidential permit by the DOE could result in Puget Power relying on other means to achieve the stated benefits of the project. Alternative means of achieving these benefits could include:

(1) Installing larger size conductors on existing transmission lines to increase transfer capability and reduce electrical losses;

(2) Development and construction of new, non-conventional types of generating plants (e.g., solar or wind) closer to load centers to reduce the need for construction of conventional generating plants and to reduce electrical transmission losses;

(3) Load management by energy storage or conservation and/or replacement of some end uses of electricity by other sources of energy, which would reduce seasonal variations in load and total annual electrical energy requirements;

(4) Construction of other domestic transmission projects such as the BPA-Puget alternative to interconnect with U.S. utilities; and

(5) Development of cogeneration and distributed small power projects throughout the state.

Mitigation Alternatives

The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number

of alternative possibilities as to where, when and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively identified groups of alternatives for consideration in the EIS include: (a) design, (b) route selection, (c) construction practices and (seasonal) timing, (d) rights-of-way clearing procedures, and (e) rights-of-way maintenance practices.

Comments and Scoping Meetings

The purpose of the scoping meetings is to obtain information from interested parties on the issues which should be addressed when preparing the EIS. These meetings will be conducted informally; however, a transcript of the meetings will be prepared. Parties who desire to present oral comments at a meeting should provide advance notice to the DOE by August 16, 1990, if possible. The DOE has designed Mrs. Ellen Russell of the Office of Fuels Programs as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be allotted approximately 5 minutes for their oral statement. Should any speaker desire to provide for the record further information which cannot be presented within the designated time, such written additional information will be accepted for consideration in preparing the EIS until September 14, 1990. Written comments will be considered and given equal weight with oral comments. Meetings will commence at the times specified above and will continue until all those present who wish to speak have had an opportunity to do so.

A transcript of the scoping meetings will be retained by the DOE and, upon request, made available for inspection and copying at the Office of Fuels Programs, Room 3F-094, Forrestal Bldg., 1000 Independence Avenue, S.W., Washington, D.C. 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Draft EIS Schedule and Availability

The draft EIS is scheduled for completion by June 1991, at which time its availability will be announced in the Federal Register and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the draft EIS for review and comment when it is issued should notify

Mrs. Ellen Russell at the address given in the prior section.

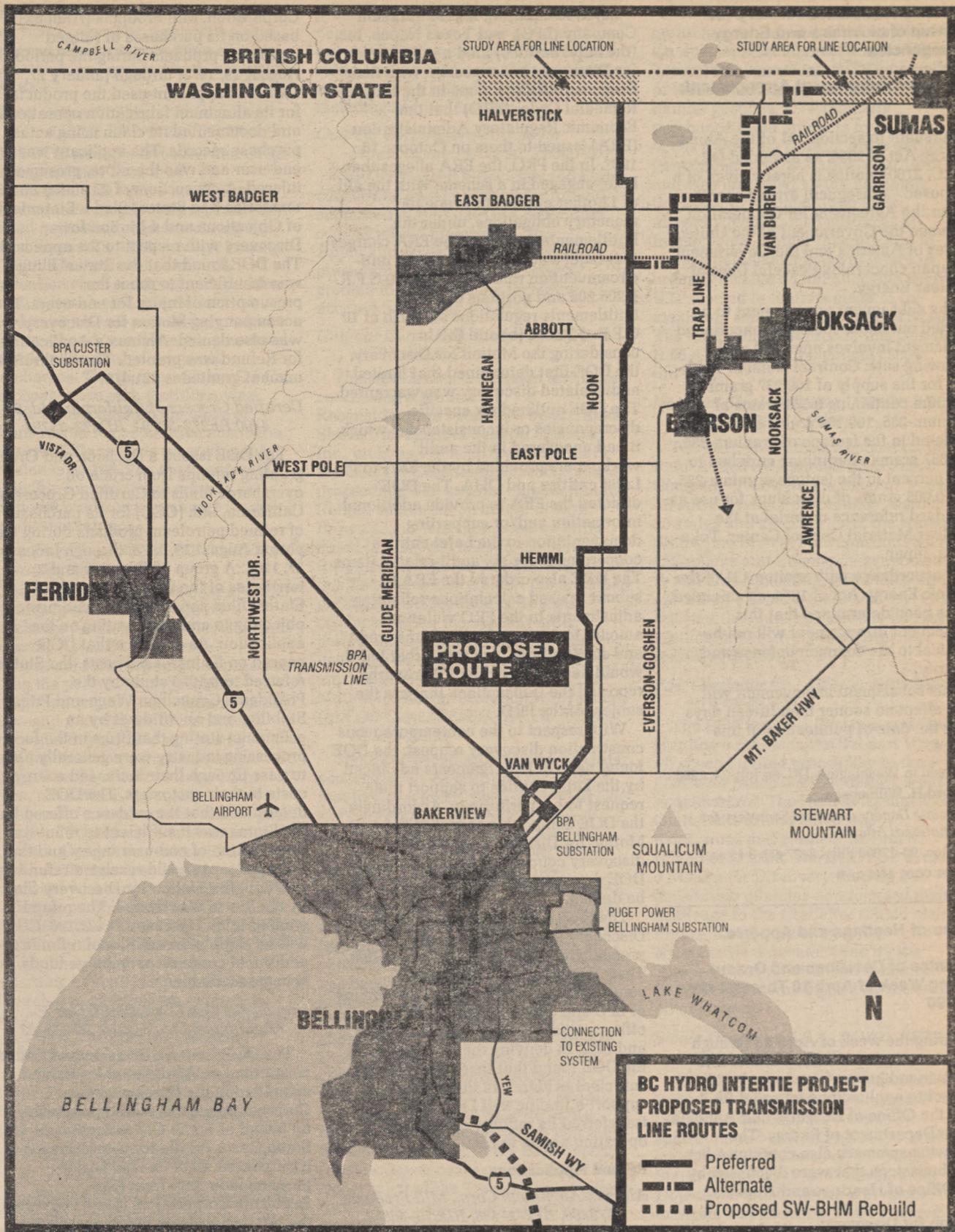
One of the requirements placed on the applicant for a Presidential permit is the submission of an Environmental Report. This and other documents to be used in

the preparation of the draft EIS will be made available for public inspection at several public libraries or reading rooms in the State of Washington. A notice of these locations will be provided in the Federal Register at a later date.

Issued in Washington, DC, on July 20, 1990.

Peter N. Brush,
Acting Assistant Secretary, Environment, Safety and Health.

BILLING CODE 6450-01-M



[FR Doc. 90-17776 Filed 7-27-90; 8:45 am]

BILLING CODE 6450-01-C

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

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

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-JA-421, for the supply of 169,237 grams of uranium containing 0.535 grams of uranium-235, 169,154 grams of uranium, depleted in the isotope of uranium-235, 507,837 grams of uranium, enriched to 3.12 percent in the isotope uranium-235, and 0.005 grams of plutonium, for use as standard reference material at the Nuclear Material Control Center, Toka-Mura, Japan.

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

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on July 24, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-17896 Filed 2-27-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During Week of April 30 Through May 4, 1990

During the week of April 30 through May 4, 1990, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Motion for Discovery

Lajet, Inc., et al., 5/3/90, KR05-10, LRD-0001

Lajet, Inc. (Lajet), Lajet Petroleum Company (LPC), and Texas Napco, Inc. (the Lajet entities) filed a joint Motion for Discovery in connection with their Statement of Objections to the Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to them on October 16, 1987. In the PRO, the ERA alleges that Lajet engaged in a scheme with the aid of 13 other entities to evade its monetary obligations, under the Entitlements Program. The ERA charges that Lajet's actions violated the anti-circumvention rule codified at 10 C.F.R. § 205.202 and portions of the Entitlements regulations set forth at 10 C.F.R. § 211.66 (b) and (h). In considering the Motion for Discovery, the DOE first determined that limited audit-related discovery was warranted. The DOE outlined six specific discrepancies or inconsistencies which it had uncovered in the audit workpapers provided by the ERA to the Lajet entities and OHA. The DOE directed the ERA to provide additional information and/or supporting documentation to the Lajet entities concerning these six audit-related items. The DOE also ordered the ERA to submit revised calculations reflecting adjustments to the PRO violation amount to account for the "runs credit" and small refiner bias credit that Lajet would have received had it properly reported the transactions that are the subject of the PRO.

With respect to the contemporaneous construction discovery request, the DOE found none of the arguments advanced by the Lajet entities to support their request to be meritorious. Accordingly, the DOE denied this aspect of the Motion for Discovery. As for the discovery concerning third parties, the DOE determined that the request should be denied.

The ERA also presented a Motion for Discovery in the enforcement proceeding involving the Lajet entities. Their motion sought information concerning (1) the assets and operations of LPC and (2) the commonality of officers, and directors between Lajet and LPC. In denying the ERA's motion, the DOE found that there was already sufficient evidence in the record to support a finding that Lajet had transferred its refinery and other operating assets to LPC.

Refund Applications

Alumax Aluminum Corp., Mill Products, 5/3/90, RF272-488, RD272-488

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Alumax Aluminum

Corporation, Mill Products (Alumax) based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicant used the products for its aluminum fabrication operations and documented its claim using actual purchase records. The applicant was an end-user and was therefore, presumed injured. A consortium of 28 states and 2 territories (the States) filed a Statement of Objections and a Motion for Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. Alumax's Application for Refund was granted. The total refund amount granted is \$21,476.

Certified Grocers of California, Ltd. 5/4/90 RF272-35794, RD272-35794

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Certified Grocers of California, Ltd. (CGC) for its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of 23 states and 2 territories of the United States (the States) filed consolidated pleadings objecting to and commenting on the application. As evidence that CGC passed on its increased costs, the States referred to a 1976 study by the Presidents Council on Wage and Price Stability and an affidavit by an economist stating that firms in the food processing industry were generally able to pass through their increased energy costs to their customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the Applicant should receive a refund. In addition, the Motion for Discovery filed by the States was denied. The refund granted in this Decision is \$21,196. CGC will be eligible for additional refunds as additional crude oil overcharge funds become available.

Dorchester Gas Corp./Smith Gas & Appliance, Inc., 5/1/90, RF253-63

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Dorchester Gas Corporation special refund proceeding on behalf of Smith Gas & Appliance, Inc. Smith Gas & Appliance established that it purchased all of its Dorchester propane indirectly from Home Petroleum Corporation. Home Petroleum did not demonstrate that it absorbed Dorchester's alleged overcharges for its propane purchases. Accordingly, Smith Gas & Appliance was treated as an

applicant that had purchased directly from Dorchester. The Application was approved using a presumption of injury. The total refund granted in this Decision is \$6,628.

Gilbert Seiler, Jr. Farmers Union Oil Co., 5/2/90, RA272-24, RA272-25

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to two applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants' original applications had previously been either dismissed or denied. Mr. Seiler was found to be an end-user of the products he claimed and was therefore presumed injured by the alleged crude oil overcharges. The Farmers Union Oil Co. is a cooperative and, therefore, was eligible for a refund on the basis of gallons resold to cooperative members. The sum of the refunds granted in this Decision is \$3,198. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Grace Development Co., 5/3/90, RF272-12669, RD272-12669

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Grace Development Company (Grace) based on its purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. A group of 28 states and 2 territories of the United States (the States) filed a pleading objecting to and commenting on the application. The States contend that Grace, a residential property management company, was able to pass through all overcharges to its tenants. However, Grace acknowledged that it passed on the increased costs associated with only 50 percent of its heating oil purchases. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury concerning Grace's remaining heating oil purchases and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. The refund granted in this Decision is \$9,530. Grace will be eligible for additional refunds as additional crude oil overcharge funds become available.

Gulf Oil Corp./B&M Oil Co., Inc., 5/1/90, RF300-9076

The DOE issued a Decision and Order concerning an Application for Refund filed by Energy Watch, Inc., on behalf of the B&M Oil Company, Inc. (B&M), in the Gulf Oil Corporation special refund

proceeding. In its submission, B&M demonstrated that it was injured to the extent of 49.6 percent of its allocable share and, on the basis of its purchases, was granted a refund of \$62,215 including accrued interest.

Gulf Oil Corp./Cibro Petroleum Products, Inc., 4/30/90, RF300-9372

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The Application was approved using a presumption of injury. The refund granted in this Decision, including accrued interest, is \$46,419.

Gulf Oil Corp./Kirk Brown's Gulf, 5/1/90, RR300-7

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by Mr. Mike Shields, an agent of Federal Refunds, Inc., on behalf of Kirk Brown's Gulf in the Gulf Oil Corporation special refund proceeding. The original Application for Refund submitted on behalf of Kirk Brown's Gulf was dismissed by letter dated January 19, 1990. In the Motion for Reconsideration, Mr. Shields was unable to demonstrate that the applicant purchased Gulf refined petroleum products during the consent order period. Consequently, the firm was unable to show that it was injured by any alleged Gulf overcharges, and the Motion for Reconsideration was denied.

Gulf Oil Corp./W.M.G., Inc., 4/30/90, RF300-11115

The DOE issued a Decision and Order concerning an Application for Refund that had previously been granted in *Gulf Oil Corporation/Space Petroleum & Chemical Company, Inc.; Scheub Oil Service, Inc.; W.M.G., Inc.*, No. RF300-7453, 7508, 7512 January 25, 1990 (unpublished decision). In that Decision, the DOE granted W.M.G., Inc., Case No. RF300-7512, a refund of \$6,875 based on its purchases of 10,312,966 gallons of petroleum products. However, the DOE has been unable to ascertain the correct address for this applicant, and as a result, the refund check sent to the claimant was returned to the Treasury. Under the circumstances, the January 25th Decision and Order should be rescinded with respect to the W.M.G., Inc. claim, the refund granted to the claimant should be rescinded, and the monies redeposited in the DOE deposit fund escrow account maintained at the Department of the Treasury and funded by Gulf Oil Corporation, Consent Order No. RGFA00001Z.

Indian Wells Oil Co./Union Texas Petroleum Corp., 5/3/90, RF317-2

The DOE issued a Decision and Order granting a refund in the Indian Wells Oil Co. special refund proceeding to Union Texas Petroleum Corp. (UTP), a reseller of Indian Wells propane, butane, and natural gasoline. UTP regularly purchased these products from Indian Wells during the consent order period (September 1, 1973—January 31, 1976) and was identified by the Economic Regulatory Administration as an allegedly overcharged customer of Indian Wells. Rather than attempt to make a detailed showing of injury in order to receive its full allocable share, UTP elected to limit its claim to the maximum small claims refund of \$5,000. The total refund granted in this Decision is \$5,894 (\$5,000 principal plus \$894 interest).

National Steel Pellet Co., 5/1/90, RF272-10665, RD272-10665

The DOE granted an Application for Refund filed by National Steel Pellet Company (NSPC) in the Subpart V crude oil special refund proceeding. A group of 28 states and 2 territories of the United States (the States) filed consolidated Objections and Comments in opposition to NSPC's application. The States also submitted a Motion for Discovery. OHA rejected the State's objections and the Motion for Discovery and granted a refund of \$12,801.

P.H. Glatfelter Co., 4/30/90, RF272-4976, RD272-4976

The DOE issued a Decision and Order granting a refund in the Subpart V crude oil special refund proceeding to the P.H. Glatfelter Company (Glatfelter), a paper manufacturer. The DOE determined that Glatfelter's refund claim was meritorious and granted the firm a refund of \$21,918. The DOE also denied a Motion for Discovery filed by a consortium of states and rejected their challenge to the Glatfelter refund claim, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that Glatfelter was injured by the crude oil overcharges.

Sicula Oceanica S.P.A., 5/4/90, RF272-29349, RD272-29349

The DOE granted an Application for Refund filed by Sicula Oceanica S.P.A. (Sicula) in the Subpart V crude oil special refund proceeding. A group of 28 states and 2 territories of the United States (the States) filed consolidated Objections and Comments in opposition to Sicula's application. OHA rejected the State's objections and the Motions for Discovery. The refund granted in this case was \$19,920.

Standard Oil Co. (Indiana)/Maryland, RM21-176
Belridge Oil Co./Maryland, RM8-177
Coline Gasoline Corp./Maryland, RM2-178
National Helium Corp./Maryland, RM3-179
Perry Gas Processors, Inc./Maryland, RM183-180
Standard Oil Co. (Indiana)/Maryland, 4/30/90, RM251-181

The DOE issued a Decision and Order granting a Motion for Modification filed by the State of Maryland in the Amoco I, Belridge, Coline, National Helium, Perry Gas, and Amoco II special refund proceedings. The State wished to transfer \$724,028 in previously approved second-stage funds from several completed programs to the Maryland Energy Assistance Program (MEAP). The MEAP subsidizes the heating bills of low-income people. The DOE determined that the modified program was restitutionary in nature and approved the modification.

Standard Steel; Sharon Steel Corp., 5/2/90, RF272-32249, RD272-32249, RF272-34049, RF272-34049

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to Standard Steel (Standard) and Sharon Steel Corporation (Sharon), two steel producers located in Pennsylvania. In reaching its determination, the DOE rejected all objections to the applicants' claims that had been submitted by a group of states and denied the states' Motions for Discovery. The DOE held that industry-wide data, with no particular reference to the applicant, is insufficient to rebut the presumption of injury for end-users outside the petroleum industry. The DOE also stated that the mere contention that an industry had the ability pass through overcharges is not convincing evidence that a particular claimant was likely in fact to have passed through overcharges. Accordingly, Standard and Sharon were granted refunds totaling \$83,441.

Texaco Inc./Clark Hollis Texaco Service, 5/2/90, RF321-119, RF321-1675

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco, Inc. Subpart V special refund proceeding filed by Clark Hollis Texaco Service. Since the Applications were signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify its applications. The applicant filed two recertifications, each of which certified

that it had filed only one refund Application in the Texaco refund proceeding. In view of these false certifications, the DOE determined that both refund Applications should be denied.

Texaco Inc./Dick Valley Texaco, 5/4/90, RF321-1610, RF321-2794

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding by Dick Valley Texaco. Since the initial Application was signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify its Application. In its recertification, the applicant certified that it had filed only one refund Application in the Texaco refund proceeding. However, the applicant had filed another Application several weeks earlier. In view of this false certification, the DOE determined that both refund Applications should be denied.

Texaco Inc./Dill's Texaco, 5/1/90, RF321-974, RF321-3772

The DOE issued a Decision and Order denying Applications for Refund filed in the Texaco Inc. subpart V special refund proceeding by Dill's Texaco. The Applications were denied because one of the claims contained false representations.

Texaco Inc./Larose Texaco Service, 5/4/90, RF321-1659, RF321-2528

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding by LaRose Texaco Service. Since the applicant's first Application was signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify its Application. In its recertification, the applicant certified that it had filed only one refund Application in the Texaco refund proceeding. However, only several weeks earlier, the applicant had filed another Application. In view of the false certification, the DOE determined that both refund Applications should be denied.

Texaco Inc./Larry's Texaco & Larry's Car Care, 5/4/90, RF321-3337, RF321-3585

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco Inc., Subpart V special refund procedure by Larry's Texaco & Larry's Car Care. The applicant filed two Applications within

two days of each other. Both Applications certified that the applicant had filed only one refund Application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund Applications should be denied.

Texaco Inc./Reisterstown Texaco, Crowmwell Bridge Texaco, 5/2/90, RF321-2, RF321-3

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. Subpart V special refund proceeding. Each applicant purchased directly from Texaco and was a reseller whose allocable share is less than \$10,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$3,541 (\$3,096 principal and \$445 interest).

Texaco Inc./Sam Bodie & Son's Texaco, 5/4/90, RF321-470, RF321-3256

The DOE issued a Decision and Order denying duplicate Applications for Refund filed in the Texaco, Inc. Subpart V special refund proceeding by Sam Bodie & Son's Texaco. Since the applicant's first Application was signed prior to the issuance of the Decision and Order implementing refund procedures in the Texaco proceeding, the applicant was required by that Decision to recertify its Application. The applicant filed a recertification on April 2, 1990. Four days later it filed another Application which certified that it had filed only one refund Application in the Texaco refund proceeding. In view of the false certification, the DOE determined that both refund Applications should be denied.

Vickers Energy Corp./Oklahoma, 5/1/90, RQ1-552, RM1-182

The DOE issued a Decision and Order involving a second-stage Application for Refund and a Motion for Modification filed by the State of Oklahoma in the Vickers Energy Corp. special refund proceeding. The State requested permission to use \$32,920 in Vickers funds to pay the salary of the Fleet Manager/Coordinator of Fleet Vehicles that transports elderly and handicapped persons in Oklahoma City. The OHA determined that the program was restitutionary and approved it. The State also requested permission to transfer \$239,370 in Vicker's funds from the Group Homes Energy Conservation Project to a program that weatherize Head Start Centers. This request was denied, however, because its primary beneficiaries would have been children, who would be too young to have

suffered from the alleged overcharges of 1973 to 1981. Accordingly, the OHA granted Oklahoma's second-stage

refund Application and denied the State's Motion.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./ A.P. Propane, Inc., et al.....	RF304-4556.....	5/2/90
Atlantic Richfield Co./Coastal Refining & Marketing, et al.....	RF304-4457.....	5/3/90
Exxon Corp./ Jackie L. Walton, et al.....	RF307-1885.....	5/2/90
Exxon Corp./Raleigh Boone Service Co., Johnson & Johnson, Inc., Ladd W. Hamrick Fuel, Service, Inc.....	RF307-9504.....	5/2/90
	RF307-9508.....	
	RF307-9512.....	
General Dynamics Corp.	RF272-31873.....	5/3/90
Getty Oil Co./Wright Oil Co., Toler's Grocery.....	RF265-2881.....	4/30/90
	RF265-2883.....	
Gulf Oil Corp./Gilbert Enterprises, Inc.....	FR300-9365.....	4/30/90
Hofmann Industries, Inc., et al.....	RF272-56962.....	5/3/90
Shell Oil Co./Jenkins Gas Co., Inc., et al.....	RF315-5043.....	5/4/90
STANDARD MARINE LTD., et al.....	RF272-11139.....	5/2/90
TOTAL PETROLEUM/FARMERS GAS & OIL CO. OF MICHIGAN.....	RF310-10.....	5/2/90

Dismissals

The following submissions were dismissed:

Name and Case No.

Anaheim Hills Texaco; RF321-27, RF321-756
 Ben & Joe's Service Center, Inc.; RF300-0112
 Chevron U.S.A., Inc.; RF315-8760
 Cordova Shell; RF315-9628
 Country Club Gulf; RF300-0091
 Dillard's Gulf; RF300-6146
 Don's Arco #1; RF304-8293
 Donald Humes
 Don's Gulf Station; RF300-5958
 Dunhurst Shell; RF315-8369
 Garcia's Gulf Station; RF300-5884
 Gulf Service Center; RF300-0168
 Hall's Service Station; RF307-9745
 Harrison Gulf Service; RF300-0146
 James F. Penny, Jr.; RF304-2350, RF304-2475
 Lambert Oil Co., Inc.; RF321-578
 Marty's Exit 9 Gulf; RF300-0123
 McDonald Trucking; RF300-9288
 Mikes Down Town Exxon; RF307-3681
 Mundelein Shell; RF315-8376
 O'Clan Oil Co.; RF304-5744
 P. L. Cote, Inc.; RF300-9944
 Prospect Pump; RF315-8366
 Salomon, Inc. LRR-0004

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 20, 1990.

George B. Bresnay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-17697 Filed 7-27-90; 8:45 am]

BILLING CODE 8450-01-M

Issuance of Decisions and Orders During Week of June 4 Through June 8, 1990

During the week of June 4 through June 8, 1990 the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

REFUND APPLICATIONS

Atlantic Richfield Co./Dick's Arco, 6/7/90, RF304-5546

The DOE issued a Decision and Order concerning an Application for Refund filed by Mr. Dirk Fulton on behalf of Dick's Arco in the Atlantic Richfield Company special refund proceeding. In December 1987, the ownership of Dick's Arco was transferred from Mr. R.H. Shipley to Mr. Fulton. However, Mr. Fulton's refund claim is based upon provisions in the "Purchase Agreement" which was executed in conjunction with the sale of Dick's Arco. These provisions stated that Mr. Shipley assigned his interest in the DOE claim to Mr. Fulton as purchaser. Therefore, Mr. Fulton is the proper recipient of the refund for Dick's Arco. The DOE concluded that Mr. Fulton should receive a refund totalling \$1,014, representing \$734 in principal and \$280 in accrued interest.

Atlantic Richfield Co./Ivan's Arco Service, et al., 6/7/89, RF304-7404 et al.

The DOE issued a Decision and Order approving six Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. All of the applications were granted under an

applicable small claims injury presumption. Each applicant was an indirect purchaser whose supplier elected a presumption of injury rather than submit a detailed demonstration of injury. The refunds granted in this decision totalled \$13,324.

Bethlehem Steel Corp., 6/5/90, RF272-436, RD272-436

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Bethlehem Steel Corporation (Bethlehem) based upon its purchases of 2,759,078,224 gallons of refined petroleum products during the period August 19, 1973 through January 27, 1981. Bethlehem is primarily involved in the manufacture and sale of steel and steel products. However, it also owns and operates five subsidiary shortline railroads, four ocean transportation companies, and a natural resources division. The applicant was an end-user of the products it claimed and was therefore presumed injured. A consortium of states and territories of the United States filed a Statement of Objections and a Motion of Discovery with respect to the applicant. The DOE found that the States' filing was insufficient to rebut the presumption of injury for end-users. The accompanying Motion for Discovery was also denied. The total refund amount granted to Bethlehem was \$2,207,263.

Carl A. Cox, 6/7/90, RF272-7003

The Department of Energy issued a Decision and Order concerning an Application for Refund filed by Carl A. Cox in the DOE's Subpart V crude oil proceeding. In that Decision and Order, the DOE found that the applicant, a retailer of motor gasoline and other refined petroleum products, had failed to

submit sufficient evidence of injury to warrant a refund. A consortium of 30 states and 2 territories (the States) filed objections to this application. In its submission, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was not applicable to Mr. Cox, and that his application should be denied.

Chesapeake and Potomac Telephone Co., 6/5/90, RF272-8718, RD272-8718

A group of four telephone companies filed an application for refund in the Subpart V crude oil refund proceedings. A group of states and territories filed objections to this application, claiming that the applicant should not be eligible to receive refunds because it was not injured as a result of crude oil overcharges. The states also filed a Motion for Discovery, seeking information that would support their assertion of non-injury. The DOE rejected the states' arguments, finding that they had not submitted relevant material sufficient to overcome the presumption of injury available to end-user applicants in this proceeding. The DOE also denied the Motion for Discovery on similar grounds. The DOE found that the information provided in the application supported the companies' claim. Accordingly, the DOE granted a refund based on the end-user presumption of injury in the amount of \$51,588.

City of Lakeland, 6/7/90, RF272-5388

The DOE issued a Decision and Order granting a refund from the crude oil overcharge funds to the City of Lakeland's Department of Electric and Water Utilities (Lakeland). During the crude oil price control period, Lakeland purchased 414,380,098 gallons of residual fuel oil and middle distillates which it used to generate electricity. A consortium of interested parties (made up of various utilities, transporters and manufacturers) filed comments in opposition to Lakeland's refund claim. The consortium that governmental entities are barred from receiving Subpart V refunds and that Lakeland is ineligible for a refund because it passed the crude oil overcharges through to its customers and therefore was not injured by the overcharges. The DOE rejected the consortium's challenge noting that it has repeatedly ruled that governmental entities may appropriately participate in Subpart V proceedings. The DOE also rejected the consortium's claim that it had successfully rebutted the end-user presumption of injury as it applied to Lakeland. The DOE ruled that

generalized, conclusory allegations advanced in the absence of applicant-specific supporting facts have no probative value. DOE granted Lakeland a refund of \$331,504.

Decker Coal CO., 6/7/90, RC272-87

The DOE issued a Decision and Order rescinding a refund granted to Decker Coal Company (Decker) in the Subpart V crude oil refund proceeding. Due to an oversight, the DOE had failed to consider that Decker was a wholly-owned subsidiary of Pacificorp, a firm that had signed a valid waiver in the Utilities Escrow of the Stripper Well proceeding. Accordingly, the refund of \$64,204 issued to Decker was rescinded.

Exxon Corp./Blu-Gas Service, Inc., 6/7/90, RF307-2627

The DOE issued a Decision and Order concerning the Application for Refund filed by Blu-Gas Service, Inc. (Blu-Gas) in the Exxon Corporation special refund proceeding. Blu-Gas purchased indirectly from Exxon and was a reseller of Exxon products whose allocable share is less than \$5,000. During the Exxon consent order period, Blu-Gas purchased propane from Vangas, Inc. (Vangas), a direct purchaser of Exxon products. Vangas estimated that 30 to 40 percent of the product it resold to Blu-Gas originated from Exxon. Therefore, the OHA determined that Blu-Gas was entitled to receive a refund based on 35 percent of its total purchase volume claim. Accordingly, Blu-Gas was granted a refund of \$682 (\$525 principal plus \$157 interest).

Exxon Corp./Brunswick Pulp and Paper Company, 6/5/90, RF307-10119

The DOE issued a Decision and Order denying an Application for Refund filed by Brunswick Pulp and Paper Company in the Exxon Corporation special refund proceeding. The DOE found that the application was filed nine months after the extended deadline date and that the applicant had failed to demonstrate good cause for the late filing.

Farmers Union Oil Co., 6/6/90, RF272-6667

The Department of Energy issued a Decision and Order granting an Application for Refund filed by Farmers Union Oil Co. in the DOE's Subpart V crude oil proceeding. The DOE found that the applicant, an agricultural cooperative, should be treated as an end-user of the refined petroleum products for which it sought a refund, since it sold only to its end-user members, and since the applicant certified that it would pass the refund through to its members, who were the parties injured by the overcharges. A

consortium of 30 states and 2 territories (the States) filed objections to this application. In its submission, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to Farmers Union Oil Co. The DOE further determined that a refund of \$18,910 should be granted to the applicant.

Gulf Oil Corp./Hanover Gulf, 6/6/90, RR300-8

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted by Hanover Gulf in the Gulf Oil Corporation special refund proceeding. The applicant's original Application for Refund was dismissed due to insufficient documentation. The Motion for Reconsideration did not provide any additional information to document the applicant's claim. Therefore, the Motion for Reconsideration was denied and no refund was granted.

Gulf Oil Corporation/Foster's Joe Gulf, 6/7/90, RF300-8562

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding on behalf of Joe Gulf. Joe Gulf purchased Gulf products indirectly from a Gulf jobber. The jobber that supplied Joe Gulf did not show that it absorbed Gulf's alleged overcharges. Joe Gulf received a refund of \$339 under the presumptions of injury.

Gulf Oil Corp./Jack A. Allen, Inc., 6/6/90, RF300-8792

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Jack A. Allen, Inc., a consignee and a reseller of Gulf refined products. Jack A. Allen was awarded a refund of \$7,031 under the presumptions of injury.

Gulf Oil Corporation/Russell Stewart Oil CO., 6/5/90, RF300-6459

The DOE issued a Decision and Order granting the Application for Refund submitted by Russell Stewart Oil Company in the Gulf Oil Corporation special refund proceeding. In order to demonstrate the level of injury that Russell Stewart incurred, the firm submitted cost banks as well as price information which indicated the prices of petroleum product that the firm paid to Gulf Oil Corporation. The latter information was sufficient for the OHA to prepare a competitive disadvantage showing by comparing the firm's price information to average prices paid by other resellers in the Chicago

metropolitan area, as stated in *Platt's Petroleum Handbook*. Using *Platt's* prices for comparison purposes, the DOE determined that it was unlikely that Russell Stewart was injured by its Gulf purchases. However, the DOE stated that the competitive disadvantage Analysis did not demonstrate that the firm was ineligible for a Gulf refund. Accordingly, Russell Stewart was granted a refund under the presumption of injury adopted for resellers. The refund granted to the firm, which includes principal and interest, is \$23,571.

Orlando Utilities Commission, 6/6/90, RF272-18112

The DOE issued a Decision and Order concerning an Application for Refund that the Orlando Utilities Commission filed in the subpart V Crude Oil refund proceeding. The DOE determined that the refund claim was meritorious and

granted a refund of \$832,298. Philip P. Kalodner (Kalodner), counsel for various Utilities, Transporters, and Manufacturers, filed Comments and Conditional Objections to the Application for Refund. The DOE determined that the Comments and Objections were insufficient to rebut the presumption of end-user injury.

Shell Oil Company/American Aggregates Corp. et al., 6/6/90, RF315-2337 et al.

The DOE issued a Decision and Order granting 68 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each applicant was granted a refund under the presumptions for either end-users, small claims purchasers, or mid-level claimants. In cases where an individual or firm submitted more than one application, the claims were combined to determine the appropriate presumption. The total

of the refunds granted in the Decision was \$154,863 (\$122,771 principal plus \$32,092 in interest).

Texaco Inc./Holiday Texaco Service Station, Texaco Inc./Holiday Inn Texaco, 6/6/90, RF321-2895; RF321-4531

The DOE issued a Decision and Order denying duplicate refund applications from the Texaco Inc. consent order fund filed by one applicant under the names Holiday Texaco Service Station and Holiday Inn Texaco. In both applications, the applicant certified that it had filed only one refund application in the Texaco refund proceeding. In view of this false certification, the DOE determined that both refund applications should be denied.

Refund Applications

The Office of Hearings and Appeals granted refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Atlantic Richfield Co./Star's General Store <i>et al.</i>	RF304-5454	6/5/90
City of Vineland Electric Utility	RF272-1189	6/5/90
Crown Central Petroleum Corp./Kingway Consolidated, Inc.	RF313-283	6/7/90
Exxon Corp./Davis Exxon <i>et al.</i>	RF307-144	6/7/90
Exxon Corp./Tennessee Valley Authority/Western Mass. Electric Co.	RF307-6462	6/7/90
	RF307-9578	
Exxon Corp./Walnut & S.W. Exxon <i>et al.</i>	RF307-5030	6/5/90
Gulf Oil Corp./Johnson's Pine Hills Gulf <i>et al.</i>	RF300-10772	6/6/90
Gulf Oil Corp./Supertane Gas Corp.	RF300-344	6/7/90
McCracken County Board of Education <i>et al.</i>	RF272-18402	6/4/90
Shell Oil Co./Campbell Oil Co., Inc. <i>et al.</i>	RF315-7424	6/4/90
Shell Oil Co./Winters Oil Co. <i>et al.</i>	RF315-7218	6/4/90
Total Petroleum Inc./Phillips Oil Co., Inc.	RF310-350	6/7/90

Dismissals

The following submissions were dismissed:

Name and Case No.

- China Airlines, Ltd.; RF315-2834
- Coudert Brothers; LFA-0044
- Sullivan Oil Company; RF315-382

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: July 20, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-17698 Filed 7-27-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-381-5]

Air Programs; Approval and Promulgation of Implementation Plans; Compliance With Statutory Provisions

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of State implementation plan (SIP) inadequacy and call for SIP revision—Information notice.

SUMMARY: The EPA hereby gives notice that it has (1) Formally notified the Governors of those States listed in Tables A and B that their SIP's for certain areas are substantially inadequate to assure attainment and maintenance of the primary national ambient air quality standards (NAAQS) for ozone and/or carbon monoxide (CO), and (2) called upon those States to submit to EPA, SIP revisions for approval under the Clean Air Act (Act).

Subsequently, follow-up letters were sent to the appropriate State air agencies outlining the specific changes needed in each SIP. This action continues the process initiated in May 1988 when letters were sent to 42 States and the District of Columbia calling for revisions to inadequate SIP's for 93 metropolitan areas. This action identifies 38 new areas that have received a SIP call.

DATES: The EPA called on each affected State to submit to the appropriate EPA Regional Office within 60 days of receipt of the formal notification, a schedule setting forth the time periods and interim steps needed to complete all actions defined in the SIP inadequacy notice. This schedule should show expeditious completion of these activities. Generally, EPA presumes expeditious to mean 1 year.

ADDRESSES: Copies of the SIP deficiency letters (both letters to the Governors and companion letters to the State Air Directors), technical support documents supporting the determinations of SIP

inadequacy referred to in today's notice, and the documentation for excluding certain areas from the deficiency notices are located in Docket No. A-90-04, Air Docket (LE-131), Room M-1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be examined between 8 a.m. and 4 p.m. on weekdays. A reasonable fee may be charged for copying. A duplicate copy of the docket for each affected area is located in the EPA Regional Office of the Region in which the area is located.

FOR FURTHER INFORMATION CONTACT: Inquiries relating to overall policy may be addressed to Brock Nicholson, Office of Air Quality Planning and Standards (MD-15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919-541-5517, FTS 629-5517). For questions relating to specific areas, please contact the appropriate EPA Regional Office:

Stephen Perkins, Chief, Air Branch, EPA Region I, JFK Federal Bldg., Boston, MA 02203-2211, (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), 617-565-3245.
William Baker, Chief, Air Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278, (New York, New Jersey, Puerto Rico, Virgin Islands), 212-264-2517.

Marcia Spink, Chief, Air Branch, EPA Region III, 841 Chestnut Bldg., Philadelphia, PA 19107, (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), 215-597-9075.

Bruce Miller, Chief, Air Branch, EPA Region IV, 345 Courtland St., NE., Atlanta, GA 30365, (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina), 404-374-2864.

Steven Rothblatt, Chief, Air Branch, EPA Region V, 230 South Dearborn Street, Chicago IL 60604, (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin), 312-353-2211.

Gerald Fontenot, Chief, Air Branch, EPA Region VI, First Interstate Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733, (Arkansas, Louisiana, Oklahoma, New Mexico, Texas), 214-655-7204.

Carl Walter, Chief, Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (Nebraska, Iowa, Kansas, Missouri), 913-236-2893.

Douglas Skie, Chief, Air Branch, EPA Region VIII, 999 18th Street, Denver Place-Suite 500, Denver, CO 80202-2405, (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 303-293-1750.

David Calkins, Chief, Air Branch, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105, (Arizona, California, Hawaii, Nevada, American Samoa, Northern Mariana Islands), 415-744-1676.

George Abel, Chief, Air Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101, (Alaska, Idaho, Oregon, Washington), 206-442-1275.

SUPPLEMENTARY INFORMATION:

I. Background.

In 1970 Act required States to adopt SIP's providing for attainment of the NAAQS within certain periods. In many areas of the country, the initial SIP's developed in the early 1970's failed to bring about timely attainment.

In 1977, Congress amended the Act to address the problem of continuing nonattainment of the NAAQS. Section 107(d) was added which required each State to submit to EPA for approval a list of all areas to be designated as either attaining the NAAQS, not attaining the NAAQS, or unclassifiable for lack of data. Section 172(a)(1) required each nonattainment area SIP to "provide for" NAAQS attainment as soon as practicable, but not later than December 31, 1982. Areas that demonstrated that it would be impossible to attain either the ozone or CO NAAQS by that date despite the use of all reasonably available control measures could obtain attainment date extensions until December 31, 1987. The 1977 amendments retained as a remedial mechanism the Administrator's authority in section 110(a)(2)(H) to find a SIP "substantially inadequate" and thereby call for SIP revisions.

On November 24, 1987 (52 FR 45044), EPA proposed a policy to set up a new planning process for areas that would not attain the NAAQS for ozone and CO by December 31, 1987. That notice announced EPA's intent to make section 110(a)(2)(H) findings for areas still not attaining those standards and thereby to call for revision of the SIP's for those areas.

II. Calls for SIP Revisions

The EPA believes that, even before the development of an improved comprehensive national program for CO and ozone nonattainment areas resulting from anticipated Act amendments, the State should initiate certain fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. Then, upon publication of the national program, EPA will direct all areas affected by SIP calls to begin the process of fully implementing all other elements of such a program.

In early May 1988, EPA released 1987 data on the degree to which areas throughout the nation have attained or failed to attain the ozone and CO NAAQS, and SIP calls were issued for these areas. On September 7, 1988 at 53 FR 34500, EPA gave notice of these SIP calls.

On July 27, 1989, EPA identified additional areas that also were considered to be failing to attain the NAAQS. These findings were made using air quality data obtained for 1988. Tables A and B that follows indicate all areas that have received a SIP call since December 1987. The areas designed with italic typeface and either a "5" (for Table A) or a "4" (for Table B), received a SIP call in 1989 or early 1990.

A. Two-Phased SIP Response

On November 9, 1989, EPA began issuing additional notices of SIP inadequacy under section 110(a)(2)(H) through letters to the Governors of the affected States. These letters or SIP calls were issued for the new areas which measured a violation, or which contributed to a violation of the ozone or CO NAAQS. These SIP calls apply to the expanded planning area described in EPA's post-1987 policy proposal. Like the SIP calls sent in May 1988, the letters to the Governors and State Air Directors further stated that the State should respond to the SIP calls in two phases. During the first phase, the States are to upgrade their existing plans to: (1) Correct discrepancies between EPA's existing Part D guidance (related to control of volatile organic compounds (VOC) and CO emissions) and the measures currently contained in their Part D SIP's; (2) satisfy any unimplemented commitments in the Part D SIP by adopting any missing control measures; and (3) begin updating the base year emission inventory of VOC's, nitrogen oxides, and CO for the expanded planning area. In addition, EPA is calling on some of these areas to commit to a schedule of monitoring for nonmethane organic compounds.

The complete response to the SIP call, or second phase of the response, will await enactment of the new Act amendments and EPA's issuance of a final ozone/CO nonattainment policy and guidance. At that time, States will be expected to complete development of a SIP that will lead to attainment and maintenance of the NAAQS throughout the expanded nonattainment planning area.

B. Geographic Coverage of the SIP Call

To assure that nonattainment planning is technically well-founded,

EPA has specified the metropolitan statistical area (MSA) [or, for ozone, the larger consolidated metropolitan statistical areas (CMSA) where one exists], and areas that were previously used for planning purposes, as the areas that should be covered by an emissions inventory. The EPA believes that the counties comprising these MSA's/CMSA's contribute to nonattainment and that any control strategy analyses must account for all emissions within that area. In the case of ozone, where transport of ozone or its precursors are an important factor the MSA/CMSA is the most obvious and appropriate boundary for initial SIP planning. For CO, where transport is less of a concern, EPA believes the MSA is appropriate as the geographic area for the emissions inventory. The area covered in an emission inventory does not necessarily predetermine the boundaries over which controls must be applied. However, sound decisions on nonattainment area planning boundaries and the concomitant control strategy must be built on complete knowledge of the problem. Therefore, States were requested to complete an emission inventory for at least the relevant MSA/CMSA for ozone and for MSA for CO.

In New England, MSA's/CMSA's are slightly different in geographic composition than the rest of the country; MSA/CMSA's are comprised of whole counties everywhere except New England where MSA/CMSA's are aggregates of cities and townships. These cities and townships have a long history as the basic unit of local government and therefore are the logical subdivision for many of the purposes for which MSA/CMSA's are established. However, for SIP calls to be consistent with the rest of the country and to assure that air quality planning is done on a sound basis given the small geographic area of these townships, whole counties are included in the SIP calls for New England.

C. SIP Call Schedule

Within 60 days of receipt of the SIP call, each affected State should have submitted a schedule to the appropriate EPA Regional Office setting forth the time periods and interim steps needed to complete all actions defined in the SIP call. This work plan should show expeditious completion of Phase I activities. Generally, EPA presumes expeditious to mean 1 year. However, it is realized that longer time periods may be necessary under special circumstances (e.g., delays due to reprogramming of available funds for timing of the air program grant cycle).

D. Exceptions

There are several areas the EPA identified on July 27, 1989 as failing to attain the NAAQS which did not receive notices of deficiency. The SIP calls for Lafayette, Indiana (Tippecanoe County); Columbia, South Carolina; Anderson, South Carolina; and Huntsville, Alabama, were deferred until receipt of quality-assured 1989 air quality data. However, now that quality-assured 1989 data are included for calculating expected exceedances, and the data show no exceedances of the ozone standard, these areas no longer meet the criteria for receiving a SIP call.

On November 22, 1989, EPA's Region VII Office requested a maintenance SIP for the Kansas City metropolitan area (letter from William A. Spratlin, Director, Air and Toxics Division, U.S. EPA, Region VII, to Peter S. Levi, Executive Director, Mid-America Regional Council). The EPA believes an additional areawide VOC control measure is necessary to ensure that the ozone NAAQS is not violated in the future. Measures under consideration include: (1) control of gasoline volatility (beyond what is federally required), (2) vapor controls on vehicle refueling at gasoline stations (commonly called Stage II vapor recovery), and (3) a vehicle inspection/maintenance program. Therefore, at this time, no SIP call has been issued.

There is one additional area that was not identified in July 1989 as failing to attain the NAAQS but subsequently received a SIP call last November. The Evansville, Indiana-Kentucky MSA received notification of SIP deficiency based on data submitted by Indiana which showed that the area met the criteria for receiving a SIP call due to recently quality-assured data.

Finally, two counties were added to the Dayton-Springfield, Ohio MSA (Darke and Preble Counties) because they were a part of Ohio's previous attainment demonstration for the Dayton area.

III. Guidance on the Necessary Revisions

As in the previous SIP calls, 53 FR 34500 (September 7, 1988), States must follow EPA guidance when responding to requests for revisions. The guidance documents States must follow include:

Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations; Office of Air Quality Planning and Standards, Air Quality Management Division, Ozone/Carbon Monoxide Programs, Branch, May 25, 1988.

Emission Inventory Requirements for Post-1987 Ozone State

Implementation Plans, EPA-450/4-88-019, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, December 1988.

Procedures for the Preparation of Emission Inventories for Precursors of Ozone, Volume 1, EPA-450/4-88-021, Third Edition, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, December 1988.

Emission Inventory Requirements for Post-1987 Carbon Monoxide State Implementation Plans, EPA-450/4-88-020, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, December 1988.

Procedures For Emission Inventory Preparation, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, Volume IV: *Mobile Sources*, EPA-450/4-81-026d (Revised), July 1989.

Guidance for the Preparation of Quality Assurance Plans for O₃/CO SIP Emission Inventories, EPA-450/4-88-023, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, December 1988.

IV. Final Actions

The EPA considers this notice to be informational only and to have no regulatory effect. It serves to inform the public of calls for SIP revisions already made by EPA pursuant to section 110(a)(2)(H) of the Act, 42 U.S.C. 7410(a)(2)(H). Any final definition of what would be an adequate response to these SIP calls and any further EPA action that would result from an inadequate State response in the future will be effective only after notice-and-comment rulemaking.

Authority: Sections 101, 107, 110, 116, 171-178, and 301(a) of the Clean Air Act as amended 42 U.S.C. 7401, 7407, 7410, 7416, 7501-08, and 7601(a); Section 129(a) of the Clean Air Act Amendments of 1977 (Pub. L. No. 95-95, 91 Stat. 685 (August 7, 1977)).

Dated: July 20, 1990.

Michael Shapiro,
Acting Assistant Administrator for Air and Radiation.

TABLE A—REQUESTS FOR OZONE STATE
IMPLEMENTATION PLAN REVISIONS
(1989 IN ITALIC TEXT)

Alabama
Birmingham
Blount Co.
Jefferson Co.
St. Clair Co.
Shelby Co.
Walker Co.
Montgomery
Autauga Co.
Elmore Co.
Montgomery Co.

Arizona
Phoenix
Maricopa Co.

Arkansas
Memphis
Crittenden Co.

California
Bakersfield
Kern Co.
Fresno
Fresno Co.
Kings Co. 1
Los Angeles-Anaheim-Riverside
Los Angeles Co.
Orange Co.
Riverside Co.
San Bernardino Co.
Ventura Co.
Modesto
Stanislaus Co.
Sacramento
El Dorado Co. 2
Placer Co. 2
Sacramento Co.
Yolo Co.
San Diego
San Diego Co.
San Francisco-Oakland-San Jose 3
Alameda Co.
Contra Costa Co.
Marin Co.
Napa Co.
San Francisco Co.
San Mateo Co.
Santa Clara Co.
Solano Co.
Sonoma Co.
Santa Barbara-Santa Maria-Lompoc
Santa Barbara Co.
Stockton
San Joaquin Co.
Visalia-Tulare-Porterville
Tulare Co.

Connecticut
Entire State
Hartford-New Britain-Middletown
New York-Northern New Jersey-Long Island
New Haven-Meriden
New London-Norwich
Waterbury
Non MSA Areas (In Previous Planning Areas
Which Includes Remainder of State) 1

Delaware
Philadelphia-Wilmington-Trenton
New Castle Co.
Kent Co. 1
Sussex Co. 5

District of Columbia
Entire District
Washington, DC

Florida

TABLE A—REQUESTS FOR OZONE STATE
IMPLEMENTATION PLAN REVISIONS
(1989 IN ITALIC TEXT)—Continued

Jacksonville
Clay Co.
Duval Co.
Nassau Co.
St. Johns Co.
Miami-Fort Lauderdale-W. Palm Beach
Broward Co.
Dade Co.
Palm Beach Co. 1
Tampa-St. Petersburg-Clearwater
Hernando Co.
Hillsborough Co.
Pasco Co.
Pinellas Co.

Georgia
Atlanta
Barrow Co.
Butts Co.
Cherokee Co.
Clayton Co.
Cobb Co.
Coweta Co.
De Kalb Co.
Douglas Co.
Fayette Co.
Forsyth Co.
Fulton Co.
Gwinnett Co.
Henry Co.
Newton Co.
Paulding Co.
Rockdale Co.
Spalding Co.
Walton Co.

Illinois
Chicago-Gary-Lake County
Cook Co.
Du Page Co.
Grundy Co.
Kane Co.
Kendall Co.
Lake Co.
McHenry Co.
Will Co.
St. Louis
Clinton Co.
Jersey Co.
Madison Co.
Monroe Co.
St. Clair Co.

Indiana
Chicago-Gary-Lake County
Lake Co.
Porter Co.
Cincinnati-Hamilton
Dearborn Co.
Evansville 5
Posey Co.
Vanderburgh Co.
Warrick Co.
Indianapolis
Boone Co.
Hamilton Co.
Hancock Co.
Hendricks Co.
Johnson Co.
Marion Co.
Morgan Co.
Shelby Co.

Louisville
Clark Co.
Floyd Co.
Harrison Co.
South Bend-Mishawaka-Elkhart 5
St. Joseph Co.
Elkhart Co. 1

TABLE A—REQUESTS FOR OZONE STATE
IMPLEMENTATION PLAN REVISIONS
(1989 IN ITALIC TEXT)—Continued

Kentucky
Bowling Green, (Non-MSA) 5
Edmonson Co.
Warren Co.
Cincinnati-Hamilton
Boone Co.
Campbell Co.
Kenton Co.
Evansville 5
Henderson Co.
Huntington-Ashland
Boyd Co.
Carter Co.
Greenup Co.
Lexington-Fayette
Bourbon Co.
Clark Co.
Fayette Co.
Jessamine Co.
Scott Co.
Woodford Co.
Louisville
Bullitt Co.
Jefferson Co.
Oldham Co.
Shelby Co.
Owensboro 5
Davies Co.
Hancock Co. 1
Paducah (Non-MSA) 5
Livingston Co.
Marshall Co.
McCracken Co.

Louisiana
Baton Rouge
Ascension Par.
E. Baton Rouge Par.
Livingston Par.
W. Baton Rouge Par.
Iberville Par. 1
St. James Par. 1
Pointe Coupee Par. 1
Lake Charles 5
Calcasieu Parish

Maine
Lewiston-Auburn 5
Androscoggin Co.
Kennebec Co. 1
Portland
Cumberland Co.
York Co. (All Except)
Berwick town
Eliot town
Kittery town
N. Berwick town
Ogunquit town
S. Berwick town
Wells town
York town
Sagadahoc Co. 1
Portsmouth-Dover-Rochester
York Co. (Part)
Berwick town
Eliot town
Kittery town
N. Berwick town
Ogunquit town
S. Berwick town
Wells town
York town
Non MSA's
Hancock Co.
Knox Co.
Lincoln Co.
Waldo Co. 5

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Maryland
Baltimore
Anne Arundel Co.
Baltimore Co.
Carroll Co.
Harford Co.
Howard Co.
Baltimore
Queen Annes Co.
Philadelphia-Wilmington-Trenton
Cecil Co.
Washington, DC
Calvert Co.
Charles Co.
Frederick Co.
Montgomery Co.
Prince Georges Co.

Massachusetts
Entire State
Boston-Lawrence-Salem
Fitchburg-Leominster
New Bedford
Pittsfield
Springfield
Worcester
Providence-Pawtucket-Fall River
Non MSA Areas (In Previous Planning Areas
Which includes Remainder of Commonwealth) 1

Michigan
Detroit-Ann Arbor
Lapeer Co.
Livingston Co.
Macomb Co.
Monroe Co.
Oakland Co.
St. Clair Co.
Washtenaw Co.
Wayne Co.
Grand Rapids
Kent Co.
Ottawa Co.
Muskegon Co.
Muskegon Co.

Mississippi
Memphis
De Soto Co.

Missouri
St. Louis
Franklin Co.
Jefferson Co.
St. Charles Co.
St. Louis Co.
St. Louis

New Hampshire
Boston-Lawrence-Salem
Rockingham Co. (Part)
Atkinson town
Brentwood town
Danville town
Derry town
E. Kingston town
Hampstead town
Kingston town
Newton town
Plaistow town
Salem town
Sandown town
Seabrook town
Windham town
Londonderry town
Hillsborough Co. (Part)
Pelham town
Amherst town
Brookline town
Hollis town
Hudson town

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Litchfield town
Merrimack town
Milford town
Mont Vernon town
Nashua city
Wilton town
Portsmouth-Dover-Rochester
Rockingham Co. (Part)
Exeter town
Greenland town
Hampton town
New Castle town
Newfields town
Newington town
Newmarket town
North Hampton town
Portsmouth city
Rye town
Stratham town
Kensington town 4
South Hampton town 4
Hampton Falls town 4
Strafford Co.
Manchester 5
Hillsborough Co. (part):
Antrim town
Bedford town
Bennington town
Deering town
Francesstown town
Goffstown town
Greenfield town
Greenville town
Hancock town
Hillsborough town
Lyndeborough town
Manchester city
Mason town
New Boston town
New Ipswich town
Peterborough town
Sharon town
Temple town
Weare town
Windsor town
Merrimack Co.
Rockingham Co. (part):
Auburn town
Candia town
Chester town
Deerfield town
Epping town
Fremont town
Northwood town
Nottingham town
Raymond town

New Jersey
Allentown-Bethlehem
Warren Co.
Atlantic City
Atlantic Co.
Cape May Co.
New York-Northern New Jersey-Long Island
Bergen Co.
Essex Co.
Hudson Co.
Hunterdon Co.
Middlesex Co.
Monmouth Co.
Morris Co.
Ocean Co.
Passaic Co.
Somerset Co.
Sussex Co.
Union Co.
Philadelphia-Wilmington-Trenton
Burlington Co.
Camden Co.

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Cumberland Co.
Gloucester Co.
Mercer Co.
Salem Co.
New York
Albany-Schenectady-Troy 5
Albany Co.
Greene Co.
Montgomery Co.
Rensselaer Co.
Saratoga Co.
Schenectady Co.
Buffalo-Niagara Falls 5
Erie Co.
Niagara Co.
New York-Northern New Jersey-Long Island
Bronx Co.
Kings Co.
Nassau Co.
New York Co. (Manhattan)
Orange Co.
Putnam Co.
Queens Co.
Richmond Co.
Rockland Co.
Suffolk Co.
Westchester Co.
Poughkeepsie 5
Dutchess Co.
Jefferson Co.
Essex Co. 5

North Carolina
Charlotte-Gastonia-Rock Hill
Cabarrus Co.
Gaston Co.
Lincoln Co.
Mecklenburg Co.
Rowan Co.
Union Co.
Fayetteville 5
Cumberland Co.
Greensboro-Winston-Salem-High Point 5
Davidson Co.
Davie Co.
Forsyth Co.
Guilford Co.
Randolph Co.
Stokes Co.
Yadkin Co.
Raleigh-Durham
Durham Co.
Franklin Co.
Orange Co.
Wake Co.
Granville Co. 1

Ohio
Canton 5
Carroll Co.
Stark Co.
Cincinnati-Hamilton
Butler Co.
Clermont Co.
Hamilton Co.
Warren Co.
Cleveland-Akron-Lorain
Cuyahoga Co.
Geauga Co.
Lake Co.
Lorain Co.
Medina Co.
Portage Co.
Summit Co.
Ashtabula Co. 1,5
Columbus 5
Delaware Co.
Fairfield Co.
Franklin Co.

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Licking Co.
Madison Co.
Pickaway Co.
Union Co.
 Dayton-Springfield 5
Clark Co.
Darke Co.
Greene Co.
Miami Co.
Montgomery Co.
Preble Co.
 Huntington-Ashland
 Lawrence Co.
 Parkersburg-Marietta
 Washington Co.
Toledo 5
Fulton Co.
Lucas Co.
Wood Co.
 Youngstown-Warren, OH and Sharon, PA 5
Mahoning Co.
Trumbull Co.

Oklahoma
 Tulsa
 Creek Co.
 Osage Co.
 Rogers Co.
 Tulsa Co.
 Wagoner Co.

Oregon
 Portland-Vancouver
 Clackamas Co.
 Multnomah Co.
 Washington Co.
 Yamhill Co.

Pennsylvania
 Allentown-Bethlehem
 Carbon Co.
 Lehigh Co.
 Northampton Co.
Altoona 5
Blair Co.
Erie 5
Erie Co.
Harrisburg-Lebanon-Carlisle 5
Cumberland Co.
Dauphin Co.
Lebanon Co.
Perry Co.
Johnstown 5
Cambria Co.
Somerset Co.
Lancaster 5
Lancaster Co.
Reading 5
Berks Co.
 Philadelphia-Wilmington-Trenton
 Bucks Co.
 Chester Co.
 Delaware Co.
 Montgomery Co.
 Philadelphia Co.
 Pittsburgh-Beaver Valley
 Allegheny Co.
 Beaver Co.
 Fayette Co.
 Washington Co.
 Westmoreland Co.
 Butler Co. 1
 Armstrong Co. 1
Scranton-Wilkes-Barre 5
Columbia Co.
Lackawanna Co.
Luzerne Co.
Monroe Co.
Wyoming Co.

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

York 5
Adams Co.
York Co.
 Youngstown-Warren, OH and Sharon, PA 5
Mercer Co.

Rhode Island
 Entire State
 Providence-Pawtucket-Fall River
 New London-Norwich
 Non MSA Areas (In Previous Planning Areas Which Includes Remainder of State) 1

South Carolina
 Charlotte-Gastonia-Rock Hill
 York Co.
 Chester Co. 1,5
 Greenville-Spartanburg 5
 Greenville Co.
 Pickens Co.
 Spartanburg Co.
 Cherokee Co. 1

Tennessee
Knoxville 5
Anderson Co.
Blount Co.
Grainger Co.
Jefferson Co.
Knox Co.
Sevier Co.
Union Co.

Nashville
 Cheatham Co.
 Davidson Co.
 Dickson Co.
 Robertson Co.
 Rutherford Co.
 Sumner Co.
 Williamson Co.
 Wilson Co.

Memphis
 Shelby Co.
 Tipton Co.

Texas
 Beaumont-Port Arthur
 Hardin Co.
 Jefferson Co.
 Orange Co.
 Dallas-Ft. Worth
 Collin Co.
 Dallas Co.
 Denton Co.
 Ellis Co.
 Johnson Co.
 Kaufman Co.
 Parker Co.
 Rockwall Co.
 Tarrant Co.

El Paso
 El Paso Co.

Houston-Galveston-Brazoria
 Brazoria Co.
 Fort Bend Co.
 Galveston Co.
 Harris Co.
 Liberty Co.
 Montgomery Co.
 Waller Co.
 Chambers Co. 1

Utah
 Salt Lake City-Ogden
 Davis Co.
 Salt Lake Co.
 Weber Co.

Virginia
 Norfolk-Virginia Beach-Newport News
 Gloucester Co.

TABLE A—REQUESTS FOR OZONE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

James City Co.
 York Co.
 Chesapeake Co.
 Hampton Co.
 Newport News Co.
 Norfolk Co.
 Poquoson Co.
 Portsmouth Co.
 Suffolk Co.
 Virginia Beach Co.
 Williamsburg
 Richmond-Petersburg
 Charles City Co.
 Chesterfield Co.
 Dinwiddie Co. Co.
 Goochland Co.
 Hanover Co.
 Henrico Co.
 New Kent Co.
 Powhatan Co.
 Prince George Co.
 Colonial Heights
 Hopewell
 Petersburg
 Richmond
 Washington, DC
 Arlington Co.
 Fairfax Co.
 Loudoun Co.
 Prince William Co.
 Stafford Co.
 Alexandria
 Fairfax
 Falls Church
 Manassas
 Manassas Park

Washington
 Portland-Vancouver
 Clark Co.

West Virginia
Charleston 5
Kanawha Co.
Putnam Co.
Greenbrier Co. 5
 Huntington-Ashland
Cabell Co.
Wayne Co.
 Parkersburg-Marietta
Wood Co.

Wisconsin
 Chicago-Gary-Lake County
 Kenosha Co.
 Milwaukee-Racine
 Milwaukee Co.
 Ozaukee Co.
 Racine Co.
 Washington Co.
 Waukesha Co.
 Walworth Co. 1
 Sheboygan
 Sheboygan Co.
 Manitowoc Co. 1
 Kewaunee Co.

Notes:
 1. The counties (or cities or townships) are either (a) Part of the previous planning area but not part of the CMSA (or MSA, or (b) counties adjacent to the CMSA (or MSA) and measuring violations.
 2. The Lake Tahoe, CA, area is excluded from the SIP call because it is physically separated from the Sacramento area by a mountain range. The exact description of the Lake Tahoe area is described in 40 CFR 81.275.
 3. Santa Cruz Co., CA, was not included because it is physically separated from the Bay Area by a mountain range.

4. No air quality data yet available; however, because it is physically surrounded by nonattainment areas, it is receiving a SIP call.
5. SIP call in November 1989.

TABLE B—REQUESTS FOR CARBON MON-OXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)

Alaska

Anchorage
Anchorage Borough
North Star Borough (Fairbanks)

Arizona

Phoenix
Maricopa Co.

Arkansas

Memphis
Crittenden Co.

California

Chico
Butte Co.
Fresno
Fresno Co.
Los Angeles-Anaheim-Riverside 0
Los Angeles Co.
Orange Co.
Riverside Co.
San Bernardino Co.
Modesto
Stanislaus Co.
Sacramento
El Dorado Co.
Placer Co.
Sacramento Co.
Yolo Co.
San Diego 4
San Diego Co.
San Francisco-Oakland-San Jose 2
Alameda Co.
Contra Costa Co.
Marin Co.
Napa Co.
San Francisco Co.
San Mateo Co.
Santa Clara Co.
Solano Co.
Sonoma Co.

Colorado

Colorado Springs
El Paso Co.
Denver-Boulder
Adams Co.
Arapahoe Co.
Boulder Co.
Denver Co.
Douglas Co.
Jefferson Co.
Fort Collins-Loveland
Larimer Co.
Greeley
Weld Co.

Connecticut

New York-Northern New Jersey-Long Island
Fairfield Co.
New Haven Co. (Part)
Ansonia city
Beacon Falls town
Derby city
Milford city
Oxford town
Seymour town
Litchfield Co. (Part)
Bridgewater town
New Milford town
Hartford-New Britain-Middletown
Hartford Co. (Part)
Bristol city
Burlington town
Avon town

TABLE B—REQUESTS FOR CARBON MON-OXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Bloomfield town
Canton town
E. Granby town
E. Hartford town
E. Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford town
Manchester town
Marlborough town
Newington town
Rocky Hill town
Simsbury town
S. Windsor town
Suffield town
W. Hartford town
Wethersfield town
Windsor town
Windsor Locks town
Berlin town
New Britain city
Plainville town
Southington town
Litchfield Co. (Part)
Plymouth town
Barkhamsted town
New Hartford town
New London Co. (Part)
Colchester town
Tolland Co. (Part)
Andover town
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Somers town
Stafford town
Tolland town
Vernon town
Willington town
Middlesex Co. (Part)
Cromwell town
Durham town
E. Hampton town
Haddam town
Middlefield town
Middleton city
Portland town
E. Haddam town
Non CMSA Portion of Hartford (Part of Previous Planning Area AQCR 42) 3
Litchfield Co. (Part)
Bethlehem town
Thomaston town
Watertown town
Woodbury town
New Haven Co. (Part)
Bethany town
Branford town
Cheshire town
E. Haven town
Guilford town
Hamden town
Madison town
Meriden city
Middlebury town
Naugatuck town
New Haven city
N. Bradford town
N. Haven town
Orange town
Prospect town
Southbury town
Wallingford town

TABLE B—REQUESTS FOR CARBON MON-OXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Waterbury city
W. Haven city
Wolcott town
Woodbridge town
District of Columbia
Entire District
Washington, DC
Idaho
Boise City
Ada Co.
Illinois
St. Louis
Clinton Co.
Jersey Co.
Madison Co.
Monroe Co.
St. Clair
Maryland
Baltimore
Anne Arundel Co.
Baltimore Co.
Carroll Co.
Harford Co.
Howard Co.
Baltimore
Queen Annes Co.
Washington, DC
Calvert Co.
Charles Co.
Frederick Co.
Montgomery Co.
Prince Georges Co.
Massachusetts
Boston-Lawrence-Salem-New Bedford
Non CMS/MSA (Previous Planning Areas) 3
Above Areas Include:
Essex Co.
Middlesex Co.
Plymouth Co.
Suffolk Co.
Barnstable Co.
Dukes Co.
Nantucket Co.
Norfolk Co.
Bristol Co.
Worcester Co. (Part)
Berlin town
Bolton town
Harvard town
Hopedale town
Lancaster town
Mendon town
Milford town
Southborough town
Upton town
Springfield-Pittsfield-Non MSA (Previous Planning Areas) 3
Above Areas Include:
Hampden Co.
Hampshire Co.
Franklin Co.
Berkshire Co.
Michigan
Detroit-Ann Arbor
Lapeer Co.
Livingston Co.
Macomb Co.
Monroe Co.
Oakland Co.
St. Clair Co.
Washtenaw Co.
Wayne Co.

TABLE B—REQUESTS FOR CARBON MONOXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Minnesota
 Duluth
 St. Louis Co.
 Minneapolis-St. Paul
 Anoka Co.
 Carver Co.
 Chisago Co.
 Dakota Co.
 Hennepin Co.
 Isanti Co.
 Ramsey Co.
 Scott Co.
 Washington Co.
 Wright Co.
 St. Cloud
 Benton Co.
 Sherburne Co.
 Stearns Co.
 Mississippi
 Memphis
 De Soto Co.
 Missouri
 Springfield
 Christian Co.
 Greene Co.
 St. Louis
 Franklin Co.
 Jefferson Co.
 St. Charles Co.
 St. Louis Co.
 St. Louis
 Montana
 Great Falls
 Cascade Co.
 Missoula Co.
 Nevada
 Las Vegas
 Clark Co.
 Reno
 Washoe Co.
 New Hampshire
 Boston-Lawrence-Salem
 Rockingham Co. (Part)
 Atkinson town
 Brentwood town
 Danville town
 E. Kingston town
 Hampstead town
 Kingston town
 Newton town
 Plaistow town
 Sandown town
 Seabrook town
 Derry town
 Salem town
 Windham town
 Londonberry town
 Hillsborough Co. (Part)
 Pelham town
 Amherst town
 Hollis town
 Hudson town
 Litchfield town
 Merrimack town
 Milford town
 Nashua town
 Brookline town
 Mont Vernon town
 Wilton town
 Manchester
 Hillsborough Co. (Part)
 Bedford town
 Goffston town
 Manchester City
 Merrimack Co. (Part)

TABLE B—REQUESTS FOR CARBON MONOXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Allenstown town
 Hooksett town
 Rockingham Co. (Part)
 Auburn town
 Candia town
 New Jersey
 New York-Northern New Jersey-Long Island
 Bergen Co.
 Essex Co.
 Hudson Co.
 Hunterdon Co.
 Middlesex Co.
 Monmouth Co.
 Morris Co.
 Ocean Co.
 Passaic Co.
 Somerset Co.
 Sussex Co.
 Union Co.
 New Mexico
 Albuquerque
 Bernalillo Co.
 New York
 New York-Northern New Jersey-Long Island
 Bronx Co.
 Kings Co.
 Nassau Co.
 New York Co. (Manhattan)
 Orange Co.
 Putnam Co.
 Queens Co.
 Richmond Co.
 Rockland Co.
 Suffolk Co.
 Westchester Co.
 Syracuse
 Madison Co.
 Onondaga Co.
 Oswego Co.
 North Carolina
 Greensboro-Winston-Salem-High Point 3
 Davidson Co.
 Davie Co.
 Forsyth Co.
 Guilford Co.
 Randolph Co.
 Stokes Co.
 Yadkin Co.
 Raleigh-Durham
 Durham Co.
 Franklin Co.
 Orange Co.
 Wake Co.
 Ohio
 Cleveland-Akron-Lorain
 Cuyahoga Co.
 Geauga Co.
 Lake Co.
 Lorain Co.
 Medina Co.
 Portage Co.
 Summit Co.
 Steubenville-Weirton
 Jefferson Co.
 Oklahoma
 Oklahoma City
 Canadian Co.
 Cleveland Co.
 Long Co.
 McClain Co.
 Pottawatomie Co.

TABLE B—REQUESTS FOR CARBON MONOXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Oregon
 Josephine Co.
 Klamath Co. 4.
 Medford
 Jackson Co.
 Portland-Vancouver
 Clackamas Co.
 Multnomah Co.
 Washington Co.
 Yamhill Co.
 Pennsylvania
 Pittsburgh-Beaver Valley
 Allegheny Co.
 Beaver Co.
 Fayette Co.
 Washington Co.
 Westmoreland Co.
 Tennessee
 Memphis
 Shelby Co.
 Tipton Co.
 Nashville
 Cheatham Co.
 Davidson Co.
 Dickson Co.
 Robertson Co.
 Rutherford Co.
 Summer Co.
 Williamson Co.
 Wilson Co.
 Texas
 El Paso
 El Paso Co.
 Houston-Galveston-Brazoria
 Brazoria Co.
 Fort Bend Co.
 Galveston Co.
 Harris Co.
 Liberty Co.
 Montgomery Co.
 Waller Co.
 Utah
 Provo-Orem
 Utah Co.
 Salt Lake City-Ogden
 Davis Co.
 Salt Lake Co.
 Weber Co.
 Virginia
 Washington, DC
 Arlington Co.
 Fairfax Co.
 Loudoun Co.
 Prince William Co.
 Stafford Co.
 Alexandria
 Fairfax
 Falls Church
 Manassas
 Manassas Park
 Washington
 Portland-Vancouver
 Clark Co.
 Seattle-Tacoma
 King Co.
 Pierce Co.
 Snohomish Co.
 Spokane
 Spokane Co.
 Yakima
 Yakima Co.
 West Virginia
 Steubenville-Weirton
 Brooke Co.

TABLE B—REQUESTS FOR CARBON MONOXIDE STATE IMPLEMENTATION PLAN REVISIONS (1989 IN ITALIC TEXT)—Continued

Hancock Co.
Wisconsin
Duluth
Douglas Co.
Minneapolis-St. Paul
St. Croix Co.
Winnebago Co. 4

NOTES:

1. Ventura Co., CA, was not included because it is physically separated from the South Coast Air Basin by a mountain range.
2. Santa Cruz Co., CA, was not included because it is physically separated from the Bay Area by a mountain range.
3. The counties (or cities or townships) are part of the previous planning area but not part of the CMSA or MSA.
4. SIP call in November 1989.

[FR Doc. 90-17693 Filed 7-27-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 23, 1990

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0390

Title: Broadcast Station Annual Employment Report

Form No.: FCC 395-B

Action: Revision

Respondents: Business (including small business)

Frequency of Response: Annually

Estimated Annual Burden: 13,055

Responses, one hour each (average)

Needs and Uses: This report is filed by all AM, FM, TV, LPTV and international broadcast licensees/

permittees. The data is used to assess and enforce the Commission's equal employment opportunity requirements.

OMB No.: 3060-0113

Title: Broadcast Equal Employment Opportunity Program Report

Form No.: FCC 396

Action: Extension (renewal)

Respondents: Business (including small business)

Frequency of Response: On occasion

Estimated Annual Burden: 2,010

Responses, three hours each (average)

Needs and Uses: This report is filed by all AM, FM, TV, LPTV, and international stations with five or more full-time employees at the time of station license renewal. The data is used to determine if stations are providing equal employment opportunity to all qualified persons.

OMB No.: 3060-0120

Title: Broadcast Equal Employment Opportunity Model Program Report

Form No.: FCC 396-A

Action: Extension (renewal)

Respondents: Business (including small business)

Frequency of Response: On occasion

Estimated Annual Burden: 2,794

Responses, one hour each (average)

Needs and Uses: This report is filed in conjunction with applications for new and transferred stations. It is designed to assist the applicant in establishing an effective equal employment opportunity program.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17703 Filed 7-27-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 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.: 232-011294.

Title: Costa Container Line/Ocean Star Container Line Space Charter and Sailing Agreement.

Parties: Costa Container Line S.p.A., Ocean Star Container Line.

Synopsis: The proposed Agreement would authorize the parties to charter, exchange, or otherwise make space and slots available to each other on their respective vessels, use common agents and agree upon sailings and port calls in the trade from ports on the Mediterranean and Black Seas and inland points via such ports to ports on the United States East and Gulf Coasts and inland points. The parties would also, in certain instances, discuss and agree upon rates, rules and regulations. The parties have no obligation under this Agreement, other than voluntarily, to adhere to any consensus or agreement reached. The parties have requested a shortened review period.

Agreement No.: 217-011295.

Title: Star/Gearbulk Reciprocal Space Charter Agreement.

Parties: Star Shipping A/S, Gearbulk, Ltd.

Synopsis: The proposed Agreement would promote efficient utilization of the parties' vessels by chartering available space on vessels operated by each party in the trade between United States Atlantic & Gulf ports and ports in Europe and the United Kingdom.

By Order of the Federal Maritime Commission.

Dated: July 24, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-17596 Filed 7-27-90; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Renaissance Cruises, Inc. and Yacht Ship Italy 2 Srl., P.O. Box 350307, 1800 Eller Drive, #300, Fort Lauderdale, Florida 33335-0307.

**Vessels: RENAISSANCE TWO and
RENAISSANCE THREE**

Dated: July 23, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-17593 Filed 7-27-90; 8:45 am]

BILLING CODE 6730-01-M

**Security for the Protection of the
Public Financial Responsibility To
Meet Liability Incurred for Death or
Injury to Passengers or Other Persons
on Voyages; Issuance of Certificate
(Casualty)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Renaissance Cruises, Inc., Yachtship Holding Corporation and Yacht Ship Italy 2 Srl., P.O. Box 350307, 1800 Eller Drive, #300, Fort Lauderdale, Florida 33335-0307.

**Vessels: RENAISSANCE TWO and
RENAISSANCE THREE**

Dated: July 23, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-17595 Filed 7-27-90; 8:45 am]

BILLING CODE 6730-01-M

**Security for the Protection of the
Public Indemnification of Passengers
for Nonperformance of
Transportation; Issuance of Certificate
(Performance)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Caribbean Cruises Ltd., 903 South America Way, Miami, Florida 33132.

Vessel: MAJESTY OF THE SEAS

Dated: July 24, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-17594 Filed 7-27-90; 8:45 am]

BILLING CODE 6730-01-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Food and Drug Administration

[Docket No. 88N-0319]

**Blood Collection Kits Labeled for
Human Immunodeficiency Virus (HIV-
1) Antibody Testing; Availability of a
Letter for Interested Persons**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a letter, dated April 18, 1990, to firms and individuals who had previously asked FDA about the potential marketing of blood collection kits labeled for HIV-1 antibody testing. FDA held an open public meeting on April 6, 1989 to obtain comments on the potential marketing of these blood collection kits. FDA will be preparing a full report on the review of the comments received in response to the public meeting. In the interim, to ensure that all interested persons have access to the information in the April 18, 1990 letter, the text of the letter is being made available to the public through this notice.

FOR FURTHER INFORMATION CONTACT: Mary Gustafson, Center for Biologics Evaluation and Research (HFB-240), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 310-443-5433.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 17, 1989 (54 FR 7279), FDA announced its preliminary criteria for the acceptability of blood collection kits labeled for HIV-1 antibody testing and invited public comment on these criteria. In the notice, FDA also announced an open public meeting to discuss blood collection kits and home test kits that are designed to detect HIV-1 antibody and suggested several topics for discussion at the meeting. On April 6, 1989, FDA held an open public meeting to obtain comments on the criteria being applied to applications for premarket approval of blood collection kits labeled for HIV-1 antibody testing. Comments were also solicited on home test kits designed to detect evidence of infection with HIV-1.

FDA is preparing a report based on the comments received at the meeting as well as the comments received in writing in response to the notice. As an interim step in this ongoing review process, FDA's Center for Biologics Evaluation and Review issued a letter on April 18, 1990, to those firms and

individuals who had previously asked FDA about marketing such products.

To ensure that all interested persons have access to the information contained in the April 18, 1990 letter, we are publishing it in the Federal Register. The text of the letter follows: April 18, 1990.

Dear _____

We are writing to you in order to provide further information concerning blood collection kits labeled for HIV-1 testing. You had earlier expressed an interest in obtaining FDA approval to market such a device. As you know, FDA previously had determined that this device is classified by statute into class III, requiring premarket approval. In March 1988, prospective manufacturers and other interested parties were informed that only those premarket approval applications (PMA's) meeting certain listed criteria would be acceptable for filing. These criteria, as subsequently published in the Federal Register (54 FR 7280; February 17, 1989), were as follows:

1. Kits are labeled and marketed for professional use only within a health care environment (e.g., hospitals, medical clinics, doctor's offices, sexually transmitted disease clinics, HIV-1 counseling and testing centers, and mental health clinics);
2. Kits provide for the collection of a venipuncture or other appropriately validated sample by one who is recognized by a state or local authority to perform such procedures;
3. The testing sequence for all samples collected with the kits includes use of a licensed screening test for HIV-1 antibody and, for those samples testing positive by the screening test, the use of an additional more specific test (i.e., Western blot or comparable test). It is recommended that a licensed test which is more specific for HIV-1 antibody be utilized. However, the agency may accept a properly validated unlicensed test until licensed tests are more widely available;
4. The instructions for sample collections, storage, shipping, and testing conform with, or are validated as the equivalent to, the package insert instructions for the specific licensed HIV-1 antibody test kit used to test samples; and
5. All results of testing are reported directly to a professional health care provider for reporting and interpretation of the result to the person requesting the test, as well as for counseling of the individual.

As you may know, on April 6, 1989, FDA held a public meeting to provide a forum for discussion of FDA's policy on blood collection kits labeled for HIV-1 antibody testing and related issues. The agency also provided an opportunity for interested persons to submit written comments on these issues by May 5, 1989. Based on all the available information, including information from the oral and written comments related to the April 1989 meeting as well as information on advances in the treatment of HIV infection, FDA has been reconsidering its position on the filing of PMA's for such blood collection kits.

FDA has not at this time changed its position concerning the validity of any of the

five criteria listed in the February 17, 1989 Federal Register notice. Should a manufacturer wish to pursue marketing a blood collection kit for anti-HIV-1 testing intended for home use, the FDA is, however, willing to review with the manufacturer the suitable information to be included in a PMA so that the agency can make a determination that the application is sufficiently complete to permit its filing and substantive review. This process does not mean, of course, that such PMA's would necessarily be approvable. Approval would be dependent upon a finding that information and data submitted demonstrate the safety and effectiveness of such blood collection kits for home use. It does mean that FDA believes that manufacturers could proceed to conduct studies under investigational device exemptions (IDE's) and submit PMA's on home blood collection kits labeled for HIV-1 antibody testing that FDA would find acceptable for review.

If you are interested in pursuing such IDE studies and possible filing of a PMA for a home blood collection kit labeled for HIV-1 antibody testing, you may wish to contact Ms. Leslie Abelson, Division of Product Certification at 301-443-5433.

Sincerely yours,

Paul D. Parkman,

Director, Center for Biologics, Evaluation and Research.

Dated: July 20, 1990.

Ronald G. Chesebore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-1765 Filed 7-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0225]

Albright and Wilson Americas; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Albright and Wilson Americas has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4215), has been filed by Albright and Wilson Americas, c/o Delta Analytical

Corp., 1414 Fenwick Lane, Silver Spring, MD 20910, proposing § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dimethylamine-epichlorohydrin copolymer as a sizing agent in the manufacture of paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: July 20, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-17660 Filed 7-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0220]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: NOTICE.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to permit the use of acesulfame potassium as a nonnutritive sweetener in all nonalcoholic beverages, including beverage bases.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 0A4212) has been filed by Hoechst Celanese Corp., Route 202-206 North, Somerville, NJ 08876, proposing that § 172.900 *Acesulfame potassium* (21 CFR 172.800) be amended to permit the use of acesulfame potassium as a nonnutritive sweetener in all nonalcoholic beverages, including beverage bases.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and

this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: July 11, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-17661 Filed 7-27-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0217]

West Agro, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that West Agro, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid, and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4203) has been filed by West Agro, Inc., 11100 North Congress Ave., Kansas City, MO 64153-1222, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of decanoic acid, nonanoic acid, phosphoric acid, propionic acid, and sodium 1-octanesulfonate, and sulfuric acid as an optional ingredient, as components of a sanitizing solution to be used in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: July 20, 1990.

Fred R. Shank,
Director, Center for Food Safety and Applied
Nutrition.

[FR Doc. 90-17662 Filed 7-27-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 55 FR 19998, May 14, 1990) is amended to reflect the changes indicated below in the titles of the programs of the National Institute of Child Health and Human Development (NICHD) (HNT). These changes will more properly reflect the organizations' reporting relationship to the Director, NICHD.

Section HN-B, Organization and Functions is amended by retitling the following programs as indicated:

(1) Under the heading *National Institute of Child Health and Human Development (HNT)*:

Current title	Revised title
(A) Intramural Research Program (HNT-4).	Division of Intramural Research (HNT4).
(B) Scientific Review Program (HNT-6).	Division of Scientific Review (HNT6).
(C) Prevention Research Program (HNT-7).	Division of Prevention Research (HNT7).

Dated: July 18, 1990.

William F. Raub,

Acting Director, NIH.

[FR Doc. 90-17589 Filed 7-27-90; 8:45 am]

BILLING CODE 4140-01-M

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts 45 FR 33729, May 20, 1980, and 50 FR 51606, December 18, 1985) is amended to reflect organizational and functional changes in the Food and Drug Administration.

Within the Office of Management and Operations, Office of the Commissioner,

FDA proposes that the Office of Information Resources Management (OIRM) be established to incorporate all computer and information resource functions within one organizational component, and reduce the span of control. This new Office will consist of the Parklawn Computer Center and the Division of Information Resources Management which is being retitled as the Division of Information Management.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraph (h-5) Parklawn Computer Center (HFA-79) in its entirety and insert a new subparagraph (h-5) Office of Information Resources Management (HFA-79) reading as follows:

(h-5) *Office of Information Resources Management (HFA-79)*. Performs Agency information resources management functions.

Advises the Commissioner on information resources management issues.

Represents the Agency to the Office of the Assistant Secretary for Health and the Office of the Secretary on information resources management.

Manages the Parklawn Computer Center.

Serves the DHHS Executive Agent for Departmentwide connectivity.

2. Delete subparagraph (h-8) Division of Information Resources Management (HFA-73) in its entirety.

Dated: July 16, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-17675 Filed 7-27-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-00-4212-16; Nev-061603, N-22848, N-24788, N-40267, N-40271, N-40272, N-40279, N-40280]

Termination of Desert Land Classifications; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates desert land classifications Nev-061603, N-22848, N-24788, N-40267, N-40271, N-40272, N-40279, and N-40280.

EFFECTIVE DATE: Termination of the classifications is effective with the publication of this document.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702-785-6526.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272), desert land classifications Nev-061603, N-22848, N-24788, N-40267, N-40271, N-40272, N-40279, and N-40280 are hereby terminated in their entireties. The following described lands are affected by this action:

Mount Diablo Meridian, Nevada

T. 10 N., R. 43 E.,

Sec. 28, E $\frac{1}{2}$ E $\frac{1}{2}$;

Sec. 33, NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$,
NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 3 N., R. 48 E.,

Sec. 3, Lots 1, 2, 5, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 4 N., R. 48 E.,

Sec. 34, Lots 3, 4.

T. 7 N., R. 50 E.,

Sec. 26, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 27, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 34, NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 35, N $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 4 N., R. 54 E.,

Sec. 7, Lot 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 14, All.

T. 4 N., R. 55 E.,

Sec. 7, Lots 1, 4, 5, 8, NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$,
E $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$.

The area described aggregates 2,081.02 acres in Nye County.

The classifications were accomplished pursuant to the Desert Land Act (43 U.S.C. 231, as amended) and the Carey Act (43 U.S.C. 641-647, as amended) in response to eight desert land applications. All the applications except N-40267 were approved and entries allowed. Entry to the lands provided segregation from all other forms of appropriation under the public land laws, including location under the mining laws. None of the entries provided up for patent and the entries have been cancelled. Application N-40267 was rejected. The classifications are no longer considered appropriate and are hereby terminated.

The cancellations and rejection were noted to the official records on June 21, 1990, and on that date the lands became open to the operation of the public land laws and location under the mining laws.

Robert G. Steeler,

Deputy State Director, Operations.

[FR Doc. 90-17599 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4410-08 0-00154]

Environmental Concern; Designation of Critical Areas; Desert Tortoise Planning**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Public invitation for nominations of Areas of Critical Environmental Concern (ACEC) for Bureau of Land Management administered public lands in the State of Nevada.**SUMMARY:** In accordance with section 6(b)(3) of Public Law 101-67, The Apex Project Nevada Land Transfer and Authorization Act of 1989, the public is invited to submit proposals for the designation, pursuant to the Federal Land Policy and Management Act of 1976, of areas of critical environmental concern (ACEC) whose designation would further the implementation of BLM's Desert Tortoise Plan or otherwise assist in the protection of resources and values of public lands in Nevada. Proposals are to be evaluated and will receive such action as may be appropriate.**DATES:** Written proposals will be received for a 60 day period and must be postmarked by September 30, 1990.**ADDRESSES:** Persons or organizations wishing to submit proposals must submit them in writing to: State Director, Bureau of Land Management, P.O. Box 12000, Reno, Nevada, 89520.**FOR FURTHER INFORMATION CONTACT:** Neil D. Talbot, Regional Planner, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520 or phone (702) 785-6483.**SUPPLEMENTARY INFORMATION:** A. In order to be a potential ACEC, both of the following criteria shall be met:1. *Relevance.* There shall be present a significant historic, cultural, or scenic value; a fish or wildlife resource or other natural system or process; or natural hazard.2. *Importance.* The above described value, resource, system, process, or hazard shall have substantial significance and values. This generally requires qualities of more than local significance and special worth, consequence, meaning, distinctiveness, or cause for concern. A natural hazard can be important if it is a significant threat to human life or property.

B. Individuals or organizations submitting nominations for ACECs must include the following information for each site:

1. Name, location, and size of each ACEC nominated. This must include a

map or legal description of the area being nominated.

2. A description of the historic, cultural or scenic value; the fish or wildlife resource or other natural system or process; or the natural hazard.

3. A description of the qualities that give the area more than local significance or worth, consequence, meaning, distinctiveness, or cause for concern. If a natural hazard is involved the nomination should include a description of the threat to human life or property.

4. A description of proposed goals, objectives, management direction and provisions needed for management of the area.

C. Nominations will be received by the Bureau of Land Management, evaluated, sorted into lists by Resource Area, and held for consideration during future land use planning activities within those Resource Areas.

D. Public ACEC nomination periods for the Tonopah and Stateline Resource Management Planning efforts were completed earlier this year in conjunction with public scoping. A total of 26 different areas were nominated for the Tonopah Planning area and 30 were nominated for the Stateline planning area. ACEC nominations for these two planning areas need not be resubmitted.

Dated: July 24, 1990.

Fred Wolf,

Acting State Director, Nevada.

[FR Doc. 90-17658 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[ES-970-00-4120-11-2410; MSES 34763, MSES 34552, MSES 34594]

Proposed Reinstatement of Terminated Oil and Gas Leases**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Reinstatement of Terminated Oil and Gas Leases MSES 34552, MSES 34594, MSES 34763.**SUMMARY:** Terminated oil and gas leases MSES 34552 located in Smith County, Mississippi, containing 203.98 acres MSES 34594 located in Franklin County, Mississippi, containing 155.54 acres, and MSES 34763 located in Adams County, Mississippi, containing 35.66 acres respectively.**FOR FURTHER INFORMATION CONTACT:** Ms. Shirlean Beshir on (703) 461-1512.**SUPPLEMENTARY INFORMATION:** Federal oil and gas leases MSES 34552 and MSES 34594 terminated automatically by operation of law on July 1, 1989 (30 U.S.C. 188).

Federal oil and gas lease MSES 34763 terminated automatically by operation of law on August 1, 1989 (30 U.S.C. 188). A petition for reinstatement of these leases was filed by James N. Leonard (lessee) under section 31D of the Minerals Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all of the following requirements for reinstatement of the subject leases:

- (a) \$1500—Reimbursement of Departmental Administrative Costs
- (b) \$3960—Back Rental Payments
- (c) \$375—Publication Costs.

The proposed reinstatement of these leases would be under the same terms and conditions of the original leases, except the rental will be increased to \$5.00 per acre per year, and royalty increased to 16½ percent beginning the effective date on each of the above-mentioned leases.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 90-17665 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-SB-M

[CA-060-00-4212-13; CA-27261]

Exchange of Public and Private Lands, Riverside and Los Angeles Counties, CA; Realty Action**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Realty Action; Exchange of Public and Private Lands, CA-27261.**SUMMARY:** The following described public lands, located in Los Angeles County, are being considered for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

Newhall Parcel, CA-27261

T. 4 N., R. 17 W.,
Section 10: SE¼SE¼;
Section 11: Lot 1;
Section 14: Lot 1.

Containing 79.27 acres, more or less.

In exchange for these lands, the United States will acquire from The Nature Conservancy under an exchange pooling agreement the following offered private land in Riverside County, California, within the Salt Creek Area of Critical Environmental Concern:

San Bernardino Meridian, California

T. 8 S., R. 11 E.,

The westerly 2,214.75 feet of the SW¼ of Section 4, excepting therefrom all oil, gas,

petroleum and other hydrocarbon substances and minerals with the right of ingress and egress for the purpose of removing the same as reserved in deed from Ynez Y. Whilton recorded Sept. 20, 1959 in book 2555 page 185 of Official Records of Riverside County, California and;

The west half of fractional Section 3, excepting therefrom that portion described as follows: Beginning at the northeast corner of the west half of said section; thence southerly on the easterly line of the west half of said section, 560 feet; thence westerly parallel with the northerly line of said section, 390 feet; thence northerly, parallel with the easterly line of the west half of said section, 560 feet to a point on the northerly line thereof; thence easterly on the northerly line of said section, 390 feet to the point of beginning. Said property is also shown on record of survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California, and;

The north 560 feet of the east 390 feet of the West ½ of Section 3, and;

The North ½ of Section 9; excepting therefrom the Northeast ¼ of the Northeast ¼ thereof; and also excepting the Northwest ¼ of the Northwest ¼ of the Northwest ¼ of said Section 9, and;

The South ½ of Section 9; excepting therefrom any portion thereof conveyed to Effie Sigrid Nelson by deed recorded March 3, 1959 in Book 2424 Page 206 of Official Records of Riverside County, California, and;

The North ½ of the Northwest ¼ of Section 10. Said property is also shown on the Records of Survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California, and;

The North ½ of Section 14, excepting therefrom any portion thereof lying within the Kaiser Company railroad right of way. Said property is also shown on Record of Survey on file in Book 15 Pages 93 & 94 of Records of Survey, Records of Riverside County, California.

The offered non-Federal lands aggregate 1,371.8 acres, more or less.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands within the Salt Creek Area of Critical Environmental Concern (ACEC). The Salt Creek ACEC contains riparian habitat supporting two Federally listed endangered species, the Yuma Clapper Rail and Desert Pupfish. The Bureau of Land Management has entered into a land exchange pooling agreement with The Nature Conservancy to acquire the offered non-Federal lands through a series of land exchanges to occur within the next two years until the values of the offered and selected lands reach equal fair market value as described by regulation. Additional Notices of Realty Action will be published identifying all specific additional offered and selected lands being considered under the land exchange pooling agreement.

The exchange would create a more logical and efficient land management

pattern and would enhance the Bureau of Land Management's goal to acquire private lands within critical wildlife habitat areas for conservation purposes. The public interest will be served by completing this exchange.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be achieved through either acreage adjustment or by cash payment in an amount not to exceed 25% of the value of the lands being transferred out of federal ownership at the conclusion of the exchange process.

The lands to be transferred from the United States will be subject to the following reservations and rights-of-way:

1. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral values together with the right to explore, prospect for, and remove same under applicable laws and regulations.

3. An existing oil and gas lease (CA-19856).

Lands to be acquired in this exchange will be subject to the following-described encumbrances or reservations:

T. 8 S., R. 11 E., SBM

1. Section 3: W½ and Section 4, easements in favor of Imperial Irrigation District.

2. Section 4: SW¼, easement located within the southerly 60 feet of said land for road purposes in favor of Ynez Y. Whilton.

3. Section 14: N½, easement located within the northerly 15 feet and the easterly 15 feet of said land in favor of Stanley L. Hechinger et al.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. This segregative effect will expire upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For detailed information concerning this exchange contact Russell L. Kaldenberg, BLM Palm Springs-South Coast Resource Area, at (619) 323-4421.

For a period of 45 days after publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, CA 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this realty

action will become the final determination of the Department of the Interior.

Dated: July 18, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90-17649 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-00-4212-11; N-53123]

Realty Action; Lease of Public Land for Recreation and Public Purposes; Storey County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action classifying public land.

SUMMARY: The following described approximately 17.78 acres of public land have been examined and identified as suitable to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, et seq.):

A Parcel of Land Comprising a Portion of Lot 6 and Lot 7 of Section 28, T. 17 N., R. 21 E., M.D.B. & M. Being More Particularly Described as Follows:

DATES:

Commencing at the west ¼ corner of said section 28; Thence S. 68° 19'32" E. a distance of 765.10 feet; Thence N.27°50'15" E. a distance of 60.00 feet; Thence N. 62°00'45" W. a distance of 404.71 feet to a point on the southeasterly line of the Ohio Relocation Amended Mineral Survey No. 2581 and being the point of beginning of this description; Thence along said southeasterly line N.27°44'30" E. a distance of 654.89 feet; Thence leaving said southeasterly line and along the northwesterly, the southwesterly and southeasterly lines of Silver Terrace Survey No. 137 the following three courses: S. 14°12'41" W. a distance of 1.14 feet; Thence S. 75°48'19" E. a distance of 450.00 feet; Thence N. 14°12'41" E. a distance of 502.95 feet; Thence leaving said Survey No. 137, S. 66°20'49" E. a distance of 110.73 feet to a point on a line that is 1320 feet east of a line between the west ¼ corner of said section 28 and the northwest section corner of said section 28 and measured at right angles; Thence along said 1320 feet line S.00°03'19" E. a distance of 1203.32 feet to a point on a line that is 330 feet south of and parallel to the east-west mid-section line of said section 28 and measured at right angles; Thence along said 330 feet line N.87°37'52" W. a distance of 1013.76 feet to a point on the east line of the Piety Hill Lode Survey No. 119; Thence along

said east line N.00°10'19" W. a distance of 258.75 feet to the northeast corner of said Survey No. 119; Thence along a straight line between said last mentioned northeast corner to the most southerly corner of said Survey No. 2581, S.79°43'00" E. a distance of 47.58 feet; Thence along the southeasterly line of said Survey No. 2581, N.27°44'30" E. a distance of 60.08 feet to the point of beginning of this description and containing 774,370 sq. ft., more or less.

A 5-year lease with the option to renew will be offered to Storey County. The 17.78 acres of land would be used for construction of a County law enforcement facility, that would include a jail, dispatch center, and office for the Sheriffs' Department and would eventually be expanded to include a Justice of the Peace Court. Land surrounding the facility would provide a safety zone.

The land is not required for federal purposes. Classification and issuance of a lease is consistent with Bureau planning for this area and would be in the public interest.

The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior.

Detailed information concerning this action is available for review at the Bureau of Land Management Carson City District Office.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws, but not the Recreation and Public Purposes Act, the mineral leasing laws, and material sales. The segregative effect will terminate as specified in an opening order published in the Federal Register.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the Federal Register.

Dated: July 20, 1990.

James W. Elliott,
District Manager.

[FR Doc. 90-17598 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[INV-930-00-4212-14; N-52000; 0-00154
4310-HC]

Realty Action; Direct Sale of Public Land in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The lands described in this notice have been identified as suitable for sale pursuant to secs. 203 and 209 of the Federal Land Policy and Management Act of 1976, (FLPMA) (43 U.S.C. 1713, 1719).

The following described 10 acres were previously conveyed to the White Pine County School District pursuant to the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4). Said lands will be reconveyed to the United States so that the White Pine County School District can acquire unrestricted title pursuant to sec. 203 and sec. 209 of FLPMA:

Mount Diablo Meridian, Nevada

T. 14 N., R. 66 E.,

Sec. 34, E½SW¼SW¼SW¼, W½SE¼
SW¼SW¼

The lands described below are currently classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act. The classification is hereby modified to reflect that the following described lands, containing 25 acres, are also suitable for sale pursuant to sec. 203 and sec. 209 FLPMA.

Mount Diablo Meridian, Nevada

T. 14 N., R. 66 E.,

Sec. 34, E½SE¼SW¼SW¼, S½SE¼
SW¼.

The White Pine County School District intends to use the lands for educational facilities. No sooner than 60 days after the date of publication of this notice in the Federal Register, the above described lands will be offered for non-competitive sale to the White Pine County School District at no less than the appraised fair market value. The School District will be required to remit a minimum bid deposit of 20 percent of the appraised value within 30 days of their receipt of the sale offer. Said remittance must be in the form of a certified check, postal money order, bank draft or cashier's check, made payable to the USDI, Bureau of Land Management. The balance of purchase money must be paid within 180 days of the School District's receipt of the sale offer. If the required payments are not received within the time frames specified herein, the sale will be canceled and the bid deposit will be forfeited.

By virtue of the aforementioned conveyance under the R&PP Act and the classification, the lands described herein remain segregated from appropriation under the other public land laws, including location under the mining laws. The terms, conditions and reservations applicable to the sale are as follows:

1. The locatable and saleable mineral interest being offered for conveyance have no known mineral value. Acceptance of the direct sale offer constitutes an application to purchase the mineral estate having no known mineral value. A nonrefundable fee payment of \$50.00 for the offered mineral interest must be included with the bid deposit.

2. All oil and gas leasable minerals will be reserved to the United States.

3. Rights-of-ways for ditches and canals will be reserved to the United States pursuant to 43 U.S.C. 945.

4. Patent will be issued subject to all valid existing rights and reservations of record.

The sale is in conformance with BLM's planning for this area and the public interest will be best served by offering this land for sale. Detailed information concerning the sale, including the reservations, sale procedures, conditions, planning and environmental documents, is available at the Ely District Office, at the above address.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301. Adverse comments, and objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior. The land will be opened for direct sale to the White Pine County School District on the date the land is offered for sale. If there are no objections to this sale the land will be offered on September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Joe C. Morris, (702) 289-4865.

Dated: July 19, 1990.

Hal M. Bybee,

Acting District Manager.

[FR Doc. 90-17600 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-00-4212-14; N-52872; 0-00154]

Realty Action: Direct Sale of Public Land in Lincoln County, NV**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action.

SUMMARY: The lands described in this notice have been identified as suitable for sale pursuant to section 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713, 1719).

The following described 40 acres of public land will be offered for sale to resolve an inadvertent unauthorized occupancy. The land will be offered by a direct sale to Keith Whipple, Charles E. Wadsworth, Floyd M. Frehner and Lois W. Potter. The proposed sale is consistent with the Schell Resource Area Management Framework Plan and local government planning. The subject lands are within the South Hiko Six-Mile grazing allotment. The permittee will be sent the required two year grazing notice prior to the sale. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian

T. 4 S., R. 60 E.,
Sec. 23, W $\frac{1}{2}$ NE $\frac{1}{4}$,

Containing 40 acres, more or less.

The mineral report for this action has determined that the subject land contains locatable and saleable minerals of no known mineral value. These mineral interests may be conveyed simultaneously with the sale of the land. Acceptance of the sale offer will constitute an application for conveyance of these mineral interests. A nonrefundable fee of \$50.00 will be required from the purchasers for purchase of the mineral interests.

Upon publication of this notice in the Federal Register, the land described above will be segregated from all forms of appropriation under the public land laws, including location under the general mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of patent or upon publication in the Federal Register of a termination of the segregation, or 270 days from the publication, whichever occurs first.

The patent, when issued, will be subject to all valid existing rights and will contain the following reservations to the United States:

A right-of-way thereon for ditches and canals constructed by the authority of the United States in accordance with the

Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

The oil and gas, potassium and sodium, and geothermal leasable minerals, will be reserved to the United States.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301. Objectives will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Joe C. Morris, (702) 289-4865.

Dated: July 19, 1990.

Hal M. Bybee,

Acting District Manager.

[FR Doc. 90-17601 Filed 7-27-90; 8:45 am]

BILLING CODE 4310-HC-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: United States International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1989 annual report.

EFFECTIVE DATES: July 25, 1990.

FOR FURTHER INFORMATION CONTACT: Paul R. Gibson (202-252-1270), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC, 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information through 1995. Notice of institution of the investigation and the schedule for such reports was published in the Federal Register of May 14, 1986 (51 FR 17678). The fifth report, covering calendar year 1989, is to be submitted by September 28, 1990.

In the original notice of investigation, it was announced that, as provided in

section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the fifth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than August 10, 1990. All submissions should be addressed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1809.

By order of the Commission.
Issued: July 25, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-17725 Filed 7-27-90; 8:45 am]
BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE**Notice of Lodging of Consent Decree**

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 18, 1990, a proposed Consent Decree in *United States v. City of Gainesville, Florida*, was lodged, simultaneously with the filing of the complaint, in the United States District Court for the Northern District of Florida. In its complaint, pursuant to

section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), the United States sought injunctive relief and civil penalties for the City's unpermitted discharges of pollutants from its two Main Street wastewater treatment plants. Under the proposed Consent Decree, the City will pay a civil penalty of \$120,000, achieve compliance with its new NPDES permit effluent limits by June 30, 1992, and construct a biofilter to control air emissions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. City of Gainesville, Florida*, D.J. Ref. No. 90-5-1-1-3472.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Florida, 227 North Bronough Street, Suite 4014, Tallahassee, Florida (contact Assistant U.S. Attorney Ken Sukhia); (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, Georgia (contact Assistant Regional Counsel Alan Dion); and (3) the Environmental Enforcement Section, Environment & Natural Resources Division, U.S. Department of Justice, Room 1541, 10th & Pennsylvania Avenue NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Environment and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC 20044-7611, or in person at the U.S. Department of Justice Building, Room 1541, 10th Street and Pennsylvania Avenue NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling \$2.30 (\$0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-17653 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Geoffrey Parke, Director; American Standards, Biosciences Corp.; Denial of Application

On April 10, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Geoffrey Parke, Director, d/b/a American Standards Biosciences Corporation, of Rd 9, Box 9021, Arnold Road, Reading Airport Complex, Reading, Pennsylvania 19605, proposing to deny his application executed on October 19, 1988, for registration as a researcher under 21 U.S.C. 823(f). The Order to Show Cause alleged that Geoffrey Parke's registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

A registered mail receipt shows that the Order to Show Cause was received on April 18, 1990. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(d), Geoffrey Parke is deemed to have waived his opportunity for a hearing. Accordingly, the Acting Administrator now enters his final order in this matter based on the investigative file. 21 CFR 1301.57.

The Acting Administrator finds that Geoffrey Parke, d/b/a American Standards Biosciences Corporation, has applied for DEA registration as a researcher. On December 1, 1988, as part of the pre-registrant investigation, DEA Investigators interviewed Geoffrey Parke. He explained that his firm planned to conduct a study of thoroughbred race horses who displayed a high level of anxiety prior to performance until they reached a point of debilitation and were unable to function successfully. Geoffrey Parke further explained that he planned to purchase 5,000 dosage units of glutethimide to evaluate the role of this substance on the horses. Glutethimide is a Schedule III controlled substance which is heavily abused in the Commonwealth of Pennsylvania. Additionally, Geoffrey Parke submitted to DEA a research protocol and the curricula vitae of the professional staff that would be involved in the research.

In reviewing the investigative file, the Acting Administrator finds that there is insufficient information to establish that Geoffrey Parke or the other individuals identified in the research protocol have

the educational background, training, knowledge or facilities to conduct the scientific research that has been proposed. The curricula vitae presented to DEA did not include complete dates and detailed descriptions of relevant work experience. In one instance, the applicant failed to indicate whether the individual earned a degree from any of the schools he attended.

The Acting Administrator further finds that the Food and Drug Administration has not issued an Investigational New Animal Drug Exemption for the use of the drug glutethimide in horses. Therefore, Geoffrey Parke does not possess the necessary authority to conduct the research proposed in his protocol.

In light of the foregoing, the Acting Administrator concludes that approval of Geoffrey Parke's application for registration would be wholly inconsistent with the public interest. No additional information or documentation has been offered on behalf of Geoffrey Parke, leaving the Acting Administrator with no choice but to deny his application for a DEA Certificate of Registration.

Accordingly, the Acting Administrator, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for DEA registration submitted by Geoffrey Parke, d/b/a American Standards Biosciences Corporation on October 19, 1988, be, and it hereby is, denied. Any other outstanding applications for registration submitted by Geoffrey Parke are denied. This order is effective August 29, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90-17670 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-70]

David J. Hackett, D.O.; Denial of Application for Registration

On July 13, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David J. Hackett, D.O. (Respondent), 2018 Union Boulevard, Allentown, Pennsylvania. The Order to Show Cause proposed to deny Respondent's application for registration. The statutory basis for the Order to Show Cause was that Respondent's proposed registration

would be inconsistent with the interest as set forth in 21 U.S.C. 823(f). The Order to Show Cause specifically alleged that: (1) Respondent was convicted on December 24, 1985, in the Pennsylvania Court of Common Pleas for Lehigh County, of six counts of administering or prescribing Desoxyn 15 mg. not for a legitimate medical purpose; (2) Respondent's dispensing and prescribing records for 1984 indicated that he dispensed or prescribed excessive quantities of Desoxyn, Preludin, Biphedamine, and Valium, all controlled substances; and (3) Respondent materially falsified his application for DEA registration by indicating that he was authorized by the State of Pennsylvania to handle Schedules II and IIN controlled substances when in fact Respondent's state license actually authorized only handling of Schedules III, IIIN, IV, and V controlled substances.

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause. Following prehearing procedures, a hearing was held in Washington, DC, on May 18, 1989. On March 15, 1990, Administrative Law Judge Mary Ellen Bittner issued her opinion and recommended ruling, findings of fact, conclusions of law and decision in support of a denial of Respondent's application. No exceptions were filed. On April 27, 1990, Judge Bittner transmitted the record of these proceedings to the Acting Administrator. The Acting Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that in 1984, the Pennsylvania Bureau of Narcotics (Bureau) initiated an undercover investigation concerning Respondent's prescribing practices. During this investigation, an undercover agent made six visits to Respondent's office. During each visit, Respondent prescribed a diet medication, such as Desoxyn, despite the fact that the undercover agent's weight was between 106 and 113 pounds and her height approximately five feet, four inches tall. Desoxyn is a Schedule II controlled substance. While the agent was weighed on every visit, she never received any type of physical examination.

The Bureau's investigation also revealed that Respondent dispensed large quantities of controlled substances to individuals for no legitimate medical purpose and without examining said

individuals. Respondent often did not see, or even speak to, these individuals before writing prescriptions for them. Many of the prescriptions were for Schedule II controlled substances, such as Desoxyn or other diet control medications. As a result of the Bureau's investigation, the State of Pennsylvania instituted criminal proceedings against Respondent. On October 22, 1985, Respondent pled guilty to six felony counts of prescribing outside of his professional practice, and on December 24, 1985, he was sentenced to 36 months of probation and was required to pay a \$750.00 fine and the costs of prosecution, to serve 100 hours of community service, and to undergo drug and alcohol abuse/impairment evaluation. Based on this criminal conviction, the Pennsylvania State Board of Osteopathic Medicine (Board) suspended Respondent's medical license.

On May 7, 1987, after Respondent completed his probation, the Board reinstated his medical license. His reinstatement was subject to the following conditions for a period of two years: random drug testing, state inspection of his records, submission of reports from the medical directors of the hospitals where he had admitting practices, personal appearances before the Board every four months, and no handling of Schedule II controlled substances, except for ordering them to be administered to in-patients at hospitals.

The administrative law judge also found that Respondent's application was not properly completed and on its face provided misleading information. However, since Respondent did provide information relevant to the disposition of his previous DEA registration, the administrative law judge found that the manner in which he completed his application did not on its own justify denial of his application.

The administrative law judge determined that the relevant issue regarding Respondent's application for registration was whether or not Respondent, from the time of his arrest and conviction to the present time, was sufficiently rehabilitated so as to be entrusted to properly handle controlled substances. The administrative law judge found that Respondent failed to make a sufficient showing of sufficient rehabilitation. Respondent was never tested for drug or alcohol abuse, and met with his probation officer infrequently and briefly. Further, despite its imposition of several conditions on the reinstatement of Respondent's license, the Board never actually

required Respondent to undergo blood or urine screen testing for drug or alcohol abuse and never inspected Respondent's patients' medical records. Also, Respondent failed to appear personally before the Board as required and did not see to the submission of reports by the medical directors of the hospitals where he had staff privileges. While Respondent should not be penalized for any inaction on the part of the Board, at the same time, he cannot offer the mere completion of his probationary period as adequate proof of his actual rehabilitation. Respondent's attendance at a few hospital staff meetings and "chit chat sort of seminars" where drug addiction was discussed likewise does not demonstrate that Respondent is sufficiently rehabilitated to handle controlled substances responsibly.

Based on Respondent's experience in handling controlled substances, his conviction in 1985, and his lack of sufficient rehabilitation, the administrative law judge recommended a denial of Respondent's application. The Acting Administrator adopts the opinion and recommended ruling of the administrative law judge, and finds that Respondent's registration would be inconsistent with the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Respondent's application for registration be denied. This order is effective immediately.

Dated: July 23, 1990.

Terrence M. Burke,
Acting Administrator.

[FR Doc. 90-17671 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-114]

Larry L. Kompus, M.D.; Granting of Restricted Registration

On November 10, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Larry L. Kompus, M.D. (Respondent) of 4166 Stoddard Road, Orchard Lake, Michigan 48033, proposing to deny his application, executed on April 4, 1988, for registration as a practitioner in Schedules III nonnarcotic, IV and V pursuant to 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration

would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held on August 15, 1989, in Ann Arbor, Michigan. On April 26, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed, and on June 1, 1990, the record in this proceeding was transmitted to the Acting Administrator. The Acting Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby enters his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent is a psychiatrist specializing in drug detoxification. It is undisputed that over a period of several years, Respondent engaged in homosexual activity with at least five of his male patients who were under treatment for drug abuse, and that he provided them with drugs, including cocaine, hashish, marijuana, and various Schedule II controlled substances, in exchange for sexual favors. None of these men had manifested any predisposition toward homosexuality prior to becoming involved with Respondent.

As a result of his actions, Respondent was arrested on January 12, 1979. In January 1980, after entering pleas of *nolo contendere* in the Circuit Court of Oakland County, Michigan, Respondent was convicted of delivery of controlled substances and of attempted third degree criminal sexual conduct. Respondent was sentenced to concurrent prison terms of one to seven years, and was actually incarcerated approximately ten months.

Effective August 6, 1980, the Michigan Department of Licensing and Regulation, Board of Medicine revoked Respondent's medical license. On February 28, 1983, the Board of Medicine reinstated Respondent's medical license subject to various conditions, including that he practice in an environment and under supervision that is acceptable to the Board; he continue to receive psychiatric care; and he and his psychiatrist report quarterly to the Medical Board or its designee. In addition, the Board of Medicine restored Respondent's state controlled substance handling authority. On February 27, 1985, the Board of Medicine issued

Respondent an unrestricted license to practice medicine.

Respondent voluntarily surrendered his prior DEA registration on November 10, 1980, after his license to practice medicine in Michigan was revoked. On March 20, 1985, Respondent applied for a new DEA Certificate of Registration. Following a hearing, the then-Administrator denied Respondent's application. See, *Larry L. Komous, M.D.*, Docket No. 85-38, 51 FR. 16402 (1986). Specifics relating to Respondent's illegal dispensing of controlled substances, his convictions and the Board of Medicine's actions against Respondent can be found in that final order and the Acting Administrator hereby incorporates the findings of fact set forth therein.

In the prior proceeding, the then-Administrator denied Respondent's application for registration, in part because an insufficient amount of time had passed since the offenses giving rise to the convictions had been committed and because sufficient evidence of Respondent's rehabilitation had not been presented.

Since the prior hearing, Respondent has been employed in several clinic or hospital-type facilities, and in 1987 or 1988, Respondent began taking the necessary steps to establish a substance abuse program. If Respondent's application for registration were not granted, he would be unable to dispense or prescribe controlled substances and would have to refer patients to other physicians. Individuals testifying on Respondent's behalf at the hearing in this matter stated that there have been no problems with Respondent's practice of medicine since his convictions.

During the instant hearing, Respondent testified that he had become more employable since the 1985 hearing, that his substance abuse clinic had approximately 100 patients, and that he had procedures in place at the clinic to insure that patients were aware of their rights and that those rights were protected. Specifically, Respondent testified that patients' progress was reviewed by a committee every 90 days, and that any patient with a complaint had recourse to a professional staff member other than respondent. Respondent's clinic employs several psychologists, a social worker and a licensed nurse practitioner. Respondent contrasted this arrangement with his practice during the 1970's, which consisted of himself and two secretaries, and emphasized that the new clinic has monitoring and review policies which did not exist in his old practice. Respondent stated that when detoxifying patients he may need to prescribe Schedule III-V controlled

substances, however, he would not need to maintain any controlled substances at the clinic. Respondent further stated that the clinic had controls in place, including a medication monitoring committee, to ensure that all medications were appropriately prescribed.

Several witnesses testified at the hearing concerning the level of rehabilitation achieved by Respondent. Respondent's psychiatrist stated that he had been treating Respondent since 1979, and that Respondent has realized the wrongfulness of his conduct and is committed "not to repeat those past errors." The psychiatrist further stated that he was satisfied that Respondent's misconduct would not recur.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f).

[i]n determining the public interest, the following factors will be considered:

- (1) The recommendation of the appropriate State licensing board or disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.
- (5) Such other conduct which may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David F. Trawick, D.D.S.*, Docket No. 86-89 53 FR 5326 (1988).

It is undisputed that Respondent engaged in egregious misconduct which was an abuse of both his professional responsibilities as a physician and his responsibilities as a DEA registrant. This conduct led to his criminal conviction, incarceration, and loss of all of his professional licenses for a period of time. It is thus clear that grounds exist for the denial of Respondent's current application.

The administrative law judge recognized Respondent's revolting practice of exchanging controlled substances for homosexual relations

with his patients. The question at this time, however, is whether Respondent has now demonstrated his fitness to possess a DEA registration. The administrative law judge concluded that Respondent can be trusted with a DEA registration. Respondent's misconduct occurred more than ten years ago. He has acknowledged the wrongfulness of his actions and has shown remorse for them. He has made meaningful efforts at rehabilitation. Finally, Respondent presented credible evidence of both his competence in his specialty and his need for some controlled substance handling authority in order to maximize his effectiveness in his practice.

The administrative law judge recommended that Respondent's application for registration be granted in Schedules III, IV and V, subject to certain restrictions.

The Acting Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision in its entirety. Respondent's application for registration is granted in Schedules III, IV and V, subject to the following conditions:

(1) Respondent's controlled substance handling authority shall be limited to writing of prescriptions only, and he shall not dispense, possess, or store any controlled substance, except that Respondent may administer controlled substances in a hospital and may possess controlled substances which are medically necessary for his own use and which he has obtained pursuant to a written prescription from another licensed practitioner.

(2) Respondent shall not prescribe any controlled substances for his own use.

(3) For two years from the date of the final order in this matter, Respondent shall submit on a quarterly basis, a log of all prescriptions for controlled substances which he has issued during the previous quarter to the Diversion Group Supervisor of the Detroit DEA office.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration executed by Larry L. Kompus, M.D., be, and it hereby is, granted in Schedules III, IV and V subject to the conditions set forth above.

Dated: July 23, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90-17672 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-97]

Clinton D. Nutt, D.O.; Revocation of Registration

On September 19, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Clinton DeWitt Nutt, D.O. (Respondent) of 12303 Market Street, Houston, Texas 77015 proposing to revoke his DEA Certificate of Registration AN0874897, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Houston, Texas on June 15, 1989. On February 26, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and, on April 27, 1990, the administrative law judge transmitted the record of these proceedings to the Acting Administrator. The Acting Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67 hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

Respondent has been practicing family medicine in Houston, Texas since 1952. In 1985, the Harris County, Texas, Sheriff's Department received a report that Respondent was issuing prescriptions for controlled substances in false names. On December 16, 1985, a Sheriff's Department detective went to Respondent's office in an undercover capacity. Respondent asked the detective what he needed and the detective responded that he wanted to lose weight and would like to obtain Desoxyn, a Schedule II stimulant used for weight control. The detective was not overweight. Respondent stated that he did not write prescriptions for Schedule II controlled substances since they required triplicate prescription forms. Respondent then performed a cursory physical examination and asked what medication other than Desoxyn the detective wanted. The detective asked for Preludin, also a Schedule II controlled substance. Again,

Respondent stated that he would not write for a substance that would require a triplicate prescription form, since the forms were monitored and he "could get maybe six months probation." Next, Respondent consulted the *Physician's Desk Reference* and told the detective that he could either have Prelu-2, a Schedule III controlled substance, or Ionamin, a Schedule IV controlled substance. The detective asked which was the stronger medication, Respondent advised that Prelu-2 was stronger, and the detective asked for a prescription for that. Respondent then wrote the detective a prescription for 30 dosage units of Prelu-2, and the detective paid \$20.00 for the office visit.

The following day another detective visited Respondent's office, using the undercover name Jim Belle. The detective told Respondent that he had just quit smoking and needed to lose some weight. Respondent performed a cursory physical examination and then asked the detective what kind of diet pills he wanted. The detective stated that he wanted Desoxyn, but knew that Respondent would not write a prescription for it, so instead he wanted either Didrex or Bontril, both Schedule III controlled substances. Respondent then wrote the detective a prescription for 30 Bontril, and the detective paid \$20.00 for the office visit. The detective is six feet, six inches tall and weighed approximately 230 pounds in December 1985.

The second detective returned to Respondent's office on January 14, 1986, and told Respondent that the Bontril had not worked. Respondent performed a cursory physical examination and told the detective that he had gained a pound and a half. The detective asked for a prescription for Desoxyn and Respondent again declined to prescribe it, telling him that issuance of such a prescription might lead to an investigation. The detective then asked for Didrex, which Respondent agreed to prescribe. At that point, the detective asked for a prescription for his "wife", who he described as being five feet/six inches tall and weighing 140 pounds. The detective offered to pay for an extra office visit. Respondent replied that he would write such a prescription if the "wife" would accompany the detective on his next visit. Respondent then wrote two prescriptions for 30 dosage units of Didrex each, one in the name of Jim Belle and the other in the name of Barbara Belle. The detective paid Respondent \$40.00 and received a receipt from Respondent showing \$20.00 paid for an injection, which the

detective did not in fact receive, and \$20.00 for an office visit.

On February 6, 1986, a third Sheriff's Department detective went to Respondent's office in an undercover capacity. She told Respondent that she wanted to lose weight, and in response to his question, said that the only diet medication she had previously taken was one available over-the-counter. Respondent performed a cursory physical examination and wrote her a prescription for 30 dosage units of Ionamin, a Schedule IV controlled substance. The detective then asked Respondent for a prescription for her "boyfriend," whom she described as "jittery." Respondent refused to issue a prescription for the "boyfriend." The detective is about five feet, six inches tall and weighed 110 or 115 pounds at that time. She paid Respondent \$20.00 for the office visit.

The second detective returned to Respondent's office on February 14, 1986, again using the name Jim Belle. Respondent stated that the detective had not lost any weight and the detective replied that the Didrex made him "feel better, anyway." The detective also stated that taking one pill at a time does not "work", and asked if he could take two at a time, to which Respondent answered in the affirmative. Respondent then agreed to write the detective a prescription for 60 dosage units of Didrex. At that point the detective asked Respondent to write a prescription for his "wife", and Respondent said that he would, but that he would charge the detective for another office visit. The detective stated, "[w]ell, I appreciate it; like I said all you could do is say no," and Respondent replied, "[w]ell, I would like to. I could use the money." The detective then offered to pay cash.

After discussing the detective's "wife", the detective gave Respondent the names of two other individuals for whom he purportedly wanted prescriptions. Respondent gave the detective a total of four prescriptions, each in a different name and each for 60 dosage units of Didrex. Respondent warned the detective not to go to a pharmacy with a computerized system to have the prescriptions filled. The detective paid Respondent \$40.00 in cash and paid an additional \$40.00 to the receptionist.

Respondent was arrested on April 14, 1987, and subsequently indicted on three counts of violating state law by prescribing controlled substances without a valid medical purpose and not in the course of professional practice. Each count corresponded to a prescription Respondent had written on February 14, 1986, in one of the fictitious

names provided by the detective. Respondent pled *nolo contendere* to the charges, and on February 1, 1988, received a sentence of deferred adjudication of guilt, was placed on five years probation, and ordered to pay a fine of \$500.00 on each count.

As a result of the criminal proceeding, the Texas State Board of Medical Examiners requested that Respondent appear before it. There was no formal hearing, but on May 3, 1988, Respondent and his attorney met with a member of the Medical Board. On May 12, 1988, Respondent executed an affidavit agreeing that he would "not prescribe, administer, or dispense any drug with a potential for abuse to any person until I have satisfied myself that there is a legitimate medical and therapeutic need, after a thorough examination has been performed by me."

Respondent testified that at the time of the events at issue in this case, he was taking medication for hypertension which caused depression, that the depression contributed to his conduct, and that he was preoccupied with the health problems of his then fiancée. Respondent offered into evidence letters dated July 1987, from two psychotherapists. One stated that Respondent "remains in considerable psychological turmoil and pain and will likely require additional psychotherapy and possibly antidepressant medication to alleviate his current symptom picture." The other psychotherapist did not express any opinion about Respondent's conduct leading to this proceeding or the likelihood of such conduct recurring. Respondent testified that at the time of the hearing, he was not undergoing therapy with either of the psychotherapists nor had he seen them recently.

The Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

- (1) The recommendation of the appropriate State licensing board or disciplinary authority.
- (2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.
- (3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.
- (4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz Jr., M.D.*, Docket No. 88-42, 54 Fed. Reg. 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 Fed. Reg. 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 88-69, 53 Fed. Reg. 5326 (1988). In the instant case, the first, second, third and fourth factors are applicable.

The action taken by the Texas State Board of Medical Examiners is not given much weight. Respondent met informally with only one member of the Board. As a result, Respondent agreed not to prescribe controlled substances "until I have satisfied myself that there is a legitimate medical and therapeutic need." This action does not impose any burden on Respondent. It simply restates the obligation which every physician who prescribes abusable controlled substances undertakes.

Respondent pled *nolo contendere* to three counts of delivery of prescriptions for a non-medical purpose not in the course of professional practice, and adjudication of guilt was deferred. A plea of *nolo contendere* generally constitutes a conviction in the context of administrative proceedings, *Pearce v. U.S. Department of Justice, Drug Enforcement Administration*, Docket No. 87-4117, (6th Cir., December 5, 1988, not published), affirming the Administrator's final order in *Charles E. Pearce, M.D.*, Docket No. 86-71, 52 FR 45877 (1987), and the Administrator has previously held that a DEA registrant may be found to have been "convicted" within the meaning of the statute despite the withholding of an adjudication of guilt. *Eric A. Baum, M.D.*, Docket No. 87-69, 53 FR 47272 at 47273 (1988). Accordingly, the administrative law judge found that Respondent has been convicted of controlled substance-related offenses.

The evidence is clear that Respondent issued several prescriptions for controlled substances to undercover detectives without a medical purpose. Respondent also issued controlled substance prescriptions to "patients" he had never examined or even seen.

The administrative law judge observed that the record disclosed relatively few improper prescriptions written by Respondent. Nonetheless, Respondent's only proffered explanation for these prescriptions was that he was

distracted and depressed at the time he issued them. The administrative law judge stated that Respondent's personal problems do not justify the abdication of his responsibilities as a DEA registrant. Further, the record establishes that Respondent's concern exhibited at the time he wrote the prescriptions was for whether the prescriptions would be traced, not whether the medication he was prescribing was medically necessary.

The administrative law judge concluded that Respondent has abused his controlled substance handling privileges in the past and has not provided any credible assurance that he now fully recognizes the responsibilities inherent in a DEA registration and that his improper conduct will not recur. As a result, Judge Bittner recommended that Respondent's DEA registration be revoked.

The Acting Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. Respondent's continued registration is inconsistent with the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AN0874897, previously issued to Clinton D. Nutt, D.O., be, and it hereby is, revoked, and any pending applications for registration as a practitioner, be, and they hereby are, denied. This order is effective August 29.

Dated: July 23, 1990.

Terrence M. Burke,
Acting Administrator.

[FR Doc. 90-17673 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Boot Camps for Juvenile Offenders; Constructive Intervention and Early Intervention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of change in the submission date for application and establishment of the date for the pre-application workshop.

This notice is published to extend the date for submission of applications under the "Book Camps for Juvenile Offenders; Constructive Intervention and Early Support" published in the

Federal Register on July 12, 1990 (55 FR 28718), and to notify all potential applicants of the date for the pre-application workshop.

The application submission date is extended to October 30, 1990.

The pre-application workshop will be held on August 15, 1990, in Washington, DC. All interested parties should call Douglas C. Dodge on 202/307-5914 to obtain the time and place.

Robert W. Sweet, Jr.,
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90-17663 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-19-M

Bureau of Prisons

Extension of the Public Comment Period on the Draft Environmental Impact Statement for the Construction of a Federal Metropolitan Detention Center in Brooklyn, NY

The Federal Bureau of Prisons has extended the 45 day public comment period on the Draft Environmental Impact Statement (DEIS) on the proposed Metropolitan Detention Center (MDC) in Brooklyn, New York. In order to provide additional opportunity for input on this project, comments will be received until August 22, 1990.

Questions concerning the proposed action and the DEIS can be answered by:

Federal Bureau of Prisons, Room 254,
320 First Street, NW., Washington, DC
20534.

Patricia Sledge,
Acting Chief, Facilities Development and Operations, Federal Bureau of Prisons.

[FR Doc. 90-17684 Filed 7-27-90; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of Unemployment Insurance Benefits Quality Control Annual Reports for Calendar Year 1989.

SUMMARY: The purpose of this notice is to announce the availability of calendar year 1989 Benefits Quality Control (BQC) Annual Reports of each State's Unemployment Insurance (UI) Program

and of the Federal digest of such reports and to indicate how they may be obtained.

ADDRESSES: The Federal digest will be available after July 31, 1990. Copies may be obtained by writing to Mary Ann Wyrsh, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Washington, DC 20210. The Appendix to this notice contains a list of the names and addresses of persons in each State who will provide the State report and explanatory narrative data upon request.

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information from the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants; size of the QC samples; and the percentages of proper payments, overpayments, and underpayments determined for the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations. The Department's digest will consist of two parts—the basic report along with State comments, where provided, and a technical appendix that contains additional data and information related to the UI/QC program. When requesting copies of the digest, it is important to indicate whether one or both volumes are needed.

In addition, each State has issued its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 23, 1990.
Roberts T. Jones,
Assistant Secretary of Labor.

State Contact Persons for Release of QC Data for 1989

Alabama: Harris Cornett, Public Information Officer, 649 Monroe Street, Montgomery, AL 36130 (205) 242-8605
 Alaska: Karen Van Dusseldorp, QC Data Analyst, P.O. Box 3-7000, Juneau, AK 99802 (907) 465-3000
 Arizona: Dave Berggren, UI Technical Support Section, Site Code 701B4, Department of Economic Security, P.O. Box 6123, Phoenix, AZ 85005 (602) 542-3771
 Arkansas: Robert K. Morgan, Director of Unemployment Insurance, Employment Security Division, P.O. Box 2981, Little Rock, AR 72203 (501) 682-3200
 California: Forrest Boomer, Quality Control Supervisor, Employment Development Department, Evaluation Division, MIC 22, P.O. Box 942880, Sacramento, CA 94280-0001 (916) 324-2933
 Colorado: Tara Singh, CO Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 251 East 12th Avenue, 3rd Floor, Denver, CO 80203 (303) 620-4578
 Connecticut: Richard Ficks, Director of Communications, Employment Security Division, Connecticut Labor Department, 200 Folly Brook Boulevard, Wethersfield, CT 06109 (203) 566-4374
 Delaware: W. Thomas MacPherson, Director, Division of Unemployment Insurance, P.O. Box 9029, Newark, DE 19711 (302) 368-6730
 District of Columbia: Roberta Bauer, Asst. Director, Compliance & Ind. Monitoring Staff, DC Department of Emp. Services, 500 "C" St., NW, room 511, Washington, DC 20001 (202) 639-1206
 Florida: Barbara K. Griffin, FL Dept. of Labor & Emp. Security, Caldwell Building, room 106, Tallahassee, FL 32399-0209 (904) 487-3448
 Georgia: Joe D. Tanner, Commissioner, Georgia Department of Labor, 148 International Blvd., NE, suite 600, Atlanta, GA 30303-1751 (404) 856-3011
 Hawaii: Douglas Odo, UI Administrator, Dept. of Labor and Ind. Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813 (808) 548-6951
 Idaho: Meridee Buersmeyer, Information and Marketing Manager, Idaho Dept. of Employment, 317 Main Street, Boise, ID 83735 (208) 334-8459
 Illinois: Joseph Wojcik, Department of Employment Security, One Congress Center, QC Unit, 3rd Floor, 3-N, 401 South State Street, Chicago, IL 60605 (312) 793-1185
 Indiana: Robert Shade, Director, Integrity Programs Division, Dept. of Emp. & Training Services, 10 North Senate Avenue, Indianapolis, IN 46204 (317) 232-7489
 Iowa: Larry Venenga, QC Supervisor, 1000 East Grand Avenue, Des Moines, IA 50319 (515) 281-8398
 Kansas: Joseph Ybarra, QC Supervisor, 401 S.W. Topeka Blvd., Topeka, KS 66603 (913) 296-4077
 Kentucky: A. J. Anderson, Director, Division for Unemployment Insurance, Second

Floor, 275 E. Main Street, Frankfort, KY 40621 (502) 564-2900
 Louisiana: Bernard J. Francis, Assistant Secretary of Labor, Louisiana Dept. of Labor, P.O. Box 94094, Baton Rouge, LA 70804-9094 (504) 342-3013
 Maine: Gail Thayer, Unemployment Insurance Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330 (207) 289-2316
 Maryland: Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 North Eutaw Street, Baltimore, MD 21201 (301) 333-5306
 Massachusetts: Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Government Center, Boston, MA 02114 (617) 727-6556
 Michigan: Carol Haupt, Bureau of Unemployment Insurance, Employment Security Commission, 7310 Woodward Avenue, Detroit, MI 48202 (313) 876-5465
 Minnesota: Bob Dockendorf, Minnesota Dept. of Jobs & Training, 390 North Roberts Street, room 201, St. Paul, MN 55101 (612) 297-3456
 Mississippi: Merrill Merkle, Mississippi Employment Security Commission, 1520 W. Capitol St., Jackson, MS 39205 (601) 961-7764
 Missouri: Tom Deuschle, Director, MO Division of Employment Security, P.O. Box 59, Jefferson City, MO 65104 (314) 751-3976
 Montana: Chuck Hunter, Administrator, Unemployment Insurance Division, P.O. Box 1726, Helena, MT 59624 (406) 444-2723
 Nebraska: Allan Amsberry, UI Director, or Don Gammill, QC Administrator, P.O. Box 94600, Lincoln, NE 68509-4600 (402) 471-9000
 Nevada: Bob Bydalek, Public Information Officer, Employment Security Department, 500 Third Street, Carson City, NV 89713 (702) 885-4620
 New Hampshire: Robert Dorsch, Assistant to the Commissioner, Department of Employment Security, 32 South Main Street, Concord, NH 03301 (603) 224-3311
 New Jersey: James A. Ware, Assistant Commissioner for Income Security, NJ Department of Labor and Industry, John Fitch Plaza, Trenton, NJ 08625 (609) 984-5666
 New Mexico: Betty Boyden-Campbell, QC Supervisor, New Mexico Department of Labor, 401 Broadway NE., P.O. Box 1928, Albuquerque, NM 87103 (505) 841-8435
 New York: Dominic M. Rotondi, UI Director, Unemployment Insurance Division, State Office Campus—Building #12, (518) 457-2878
 North Carolina: Preston L. Johnson, UI Director, Employment Security Comm. of NC, P.O. Box 25903, Raleigh, NC 27611 (919) 733-3121
 North Dakota: Lyle Halvorson, Job Service North Dakota, P.O. Box 1537, Bismarck, ND 58502 (701) 224-2825
 Ohio: Donald W. Russell, Jr., Assistant UI Director, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, Columbus, OH 43215 (614) 466-8758

Oklahoma: Terry McHale, Program Chief, OK Employment Security Commission, Will Rogers Memorial Office Bldg., Oklahoma City, OK 73105 (405) 557-7206
 Oregon: Trish Neiworth, Communications Manager, 875 Union St NE, room 310-311, Salem, OR 97311 (503) 378-3216
 Pennsylvania: Richard Puerzer, Director, Bureau of Unemployment Compensation, Benefits and Allowances Division, Department of Labor & Industry, 415 Labor & Industry Building, Harrisburg, PA 17121 (717) 787-3547
 Puerto Rico: Oscar Pagan, Assistant Secretary of Labor, PR Dept. of Labor & Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918 (809) 754-2131
 Rhode Island: Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903 (401) 277-3648
 South Carolina: R. Michael Baker, Deputy Executive Director, UI, SC Employment Security Commission, P.O. Box 995, Columbia, SC 29202 (803) 737-2400
 South Dakota: Don Kattke, Director, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402-4730 (605) 622-2452
 Tennessee: Ann Ridings, QC Supervisor, Tennessee Dept. of Emp. Security, Quality Control Unit, 500 James Robertson Parkway, Nashville, TN 37245-2700 (615) 741-3190
 Texas: William D. Grossenbacher, Administrator, Texas Employment Commission, TEC Building, room 638, Austin, TX 78778 (512) 463-2652 or Harold Bishop, Texas Employment Commission, TEC Building, room 504DT, Austin, TX 78778 (512) 463-2394
 Utah: Terry Burns, Director, Unemployment Insurance, Department of Employment Security, 174 Social Hall Avenue, P.O. Box 11249, Salt Lake City, UT 84147 (801) 533-2201
 Vermont: Robert G. Herbst, Quality Control Chief, Dept. of Employment and Training, P.O. Box 488, Montpelier, VT 05602 (802) 229-0311
 Virginia: F. W. Tucker IV, Chief of Benefits, Unemployment Insurance, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211 (804) 786-3032
 West Virginia: Andrew N. Richardson, Commissioner, Department of Employment Security, State Office Building, Charleston, WV 25305 (304) 348-2630
 Washington: Marie Brillante, Assistant Commissioner, UI, Employment Security Dept., 212 Maple Park, Olympia, WA 98504 (206) 753-5120
 Wisconsin: Chet Frederick, Dept. of Industry, Labor, and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707 (608) 266-8260
 Wyoming: Beth Nelson, Administrator, Unemployment Insurance Admin., Employment Security Commission, P.O. Box 2760, Casper, WY 82602 (307) 235-3254
 [FR Doc. 90-17576 Filed 7-27-90; 8:45 am]

BILLING CODE 4510-30-M

[Docket No. M-90-95-C]

Mine Safety and Health Administration**Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard**

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into a return.

2. Due to deteriorated returns, all permanent pump houses in a specific area along the mainline haulage cannot be ventilated to a return aircourse.

3. As an alternate method, petitioner proposes that—

(a) The pumps would be housed in an adequately sealed fireproof enclosure, equipped with a steel door;

(b) A dry powder chemical fire extinguisher would be mounted over each pump. The fire extinguisher would operate automatically when the heat from a fire is sufficient to activate the automatic mechanism assembly of the extinguisher;

(c) A signal installed in the haulage entry and activated by the heat sensors would be located so that it can be seen or heard by a responsible person; and

(d) The electrical equipment would be protected with thermal devices or equivalent designed and installed to interrupt all power circuits supplying electrical equipment within the fireproof structure.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1990. Copies of the petition

are available for inspection at that address.

Dated: July 20, 1990.

Patricia W. Silvey

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17655 Filed 7-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-98-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575-1430 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables, and transformers) to its Virginia Pocahontas No. 6 Mine (I.D. No. 44-04517) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires, trolley feeder wires, high-voltage cables, and transformers be kept at least 150 feet from pillar workings and not be located in by the last open crosscut.

2. As an alternate method, petitioner proposes to use trolley wires within 150 feet of pillar workings. The petitioner outlines specific procedures and equipment in the petition.

3. In support of this request, petitioner states that the trolley wires would be used within 150 feet of a longwall face only after production has ceased on a panel and the longwall equipment is being recovered from the longwall section.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1990. Copies of the petition are available for inspection at that address.

Dated: July 20, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17656 Filed 7-27-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-92-C]

Shamrock Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Shamrock Coal Company, Inc., P.O. Box 130, Manchester, Kentucky 40962-0130 has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Beech Fork No. 18-19 Mine (I.D. No. 15-02502) located in Leslie County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage, resistance grounded systems include a fail safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The fail safe ground check circuit must cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. The mine is currently using undervoltage release breakers to meet the requirements for undervoltage protection. After each power outage, it is necessary for an employee to travel to each belt drive and reset the low-voltage breakers before the belts can start and production can resume.

3. As an alternate method, petitioner proposes to use high-voltage vacuum contactors with short circuit interrupting capacity exceeding the available fault current at that point in the circuit.

4. In support of this request, petitioner states that—

(a) Only the conveyor belt starting equipment would be affected by this petition; and

(b) Short-circuit protection would continue to be provided by a circuit breaker with the required interrupting trips.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 29, 1990. Copies of the petition are available for inspection at that address.

Dated: July 20, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances
[FR Doc. 90-17657 Filed 07-27-90; 8:45 am]
BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Dated: July 23, 1990.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0109

Form Number: None

Type of Review: Reinstatement of a previously approved collection

Title: Application for Participation—Community Needs Plan

Description: Paperwork requirements for credit union participation in Community Development Revolving Loan Program for Credit Unions—Applying credit unions must submit application (705.5) and selected credit unions must develop a community needs plan (705.6)(a)(2))

Respondents: Federal Credit Unions
Estimated Number of Respondents: 34
Estimated Burden Hours per Response:
6 hours

Frequency of Response: Annually
Estimated Total Reporting Burden: 408
hours

Clearance Officer: Wilmer A. Theard,
(202) 682-9700, National Credit Union
Administration, room 7344, 1776 G
Street NW., Washington, DC 20456

OMB Reviewer: Gary Waxman (202)
395-7340, Office of Management and

Budget, room 3208, New Executive
Office Building, Washington, DC 20503

Becky Baker,
Secretary of the NCUA Board.
[FR Doc. 90-17690 Filed 7-27-90; 8:45 am]
BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on August 27, 1990, from 8 a.m.-6 p.m., August 28 from 8 a.m.-9 p.m., August 29 from 8:30 a.m.-7 p.m., and on August 30 from 8:30 a.m.-3:30 p.m. in room M09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 30 from 11:15 a.m.-2:30 p.m. The topic will be policy issues.

The remaining portions of this meeting on August 27 from 8 a.m.-6 p.m., on August 28 from 8 a.m.-9 p.m., on August 29 from 8:30 a.m.-7 p.m., and on August 30 from 8:30 a.m.-11:15 a.m. and from 2:30 p.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 20, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 90-17619 Filed 7-27-90; 8:45 am]
BILLING CODE 7537-01-M

Media Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (National Services Section) to the National Council on the Arts will be held on August 16-17, 1990, from 9:15 a.m.-5:30 in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 16 from 9:15 a.m.-9:45 a.m. and on August 17 from 4:30 p.m.-5:30 p.m. The topic will be introductory remarks and guidelines/policy discussion.

The remaining portions of this meeting on August 16 from 9:45 a.m.-5:30 p.m., on August 17 from 9:15 a.m.-4:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 20, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 90-17620 Filed 7-27-90; 8:45 am]
BILLING CODE 7537-01-M

Museum Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 13, 1990, from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 13 from 9 a.m.-10 a.m. The topic will be opening remarks and general discussion.

The remaining portion of this meeting on August 13 from 10 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, 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: July 20, 1990.

Yvonne M. Sabine,

*Director, Council and Panel Operations,
National Endowment for the Arts.*

[FR Doc. 90-17621 Filed 7-27-90; 8:45 am]

BILLING CODE 7537-01-M

National Council on Arts; Meeting

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 Museum Advisory Panel (Utilization of Museum Resources Section) to the National Council on the Arts will be held on August 14-16, 1990, from 9 a.m.-5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 14, from 9 a.m.-10 a.m. The topic will be opening remarks and general discussion.

The remaining portions of this meeting on August 14 from 10 a.m.-5:30 p.m. and on August 15-16 from 9 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 24, 1990.

Yvonne M. Sabine,

*Director, Council and Panel Operations,
National Endowment for the Arts.*

[FR Doc. 90-17622 Filed 7-27-90; 8:45 am]

BILLING CODE 7537-01-M

National Council on Arts; Meeting

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 Opera-Musical Theater Advisory Panel (Professional Companies Section) to the National Council on the Arts will be held on August 14-16, 1990, from 9 a.m.-7 p.m. and on August 17 from 9 a.m.-5:30 p.m. in room MO7 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 14, from 9 a.m.-to 9:30 p.m. and on August 17 from 10 a.m.-12 p.m. The topic will be introduction/update and policy discussion.

The remaining portions of this meeting on August 14 from 9:30 a.m.-7 p.m. on August 15-16 from 9 a.m.-7 p.m. and on August 17 from 9 a.m.-10 a.m. and from

12 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the *Federal Register* of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: July 24, 1990.

Yvonne M. Sabine,

*Director, Council and Panel Operations,
National Endowment for the Arts.*

[FR Doc. 90-17623 Filed 7-27-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrences for First Quarter CY 1990 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoints of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the *Federal Register* on February 24, 1977 (42 FR 10950). The AOs are described below, together with the remedial actions taken. The events are also being included in NUREG-0090, Vol 13, No. 1 ("Report to Congress on Abnormal Occurrences: January-March 1990"). This report will be available in the NRC's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC about three weeks after the

publication date of this Federal Register Notice.

Nuclear Power Plants

90-1 Loss of Vital AC Power with Subsequent Reactor Coolant System Heat-up at Vogtle Unit 1 During Shutdown

The second general AO criterion notes that a major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, there were generic regulatory concerns because of previous incidents that have occurred at plants while in shutdown conditions.

Date and place: March 20, 1990; Vogtle Unit 1, a Westinghouse-designed pressurized water reactor, operated by Georgia Power Company and located in Burke County, Georgia.

Nature and probable consequences: At the time of the event, Unit 1 had been in a refueling outage for about 25 days with its reactor coolant system (RCS) level reduced to "mid-loop" (below the top of the pressure vessel nozzles) to facilitate maintenance. Decay heat in the core was being removed by one train of the residual heat removal (RHR) system. Several pieces of equipment were out of service for maintenance, including one of Unit 1's two emergency diesel generator (EDGs). As described in more detail below, the event involved a loss of all safety ac power to Unit 1 and difficulties in starting the one available EDG with a consequent loss of shutdown cooling. Non-safety power remained available. The significance of the event is that had the licensee been unable to restore power within 1.8 hours, the plant would have been in an inadequately analyzed condition and personnel would not have had adequate procedures and training to deal with the situation. (Had the incident occurred two days after shutdown, the 1.8 hours would have been reduced to less than 15 minutes.) This status of analysis, procedures, and training is believed to be typical of industry preparedness. One alternate source of RCS makeup was available that did not require ac power and would increase the time available for the licensee to restore ac power. This involved gravity feed of borated water from the refueling water storage tank to the RCS.

Plant equipment conditions at the time of the event were as follows:

- The Unit 1 B reserve auxiliary transformer (RAT) was out of service following maintenance.
- The Unit 1 B EDG was disassembled for maintenance.

- The Unit 1 A RAT was supplying offsite power to the cross-tied Unit 1 A and B vital buses.
- The RCS temperature was being maintained at 90°F via the train A RHR pump; the train B pump was in standby.
- The vessel head was in place with the studs not fully tensioned.
- The pressurizer manway cover was removed.
- The manways for steam generators 2 and 3 were partially bolted in place and the manways for steam generators 1 and 4 were in place with bolts fully tensioned.
- The inboard charging line check valve and an accumulator isolation valve were open for inspection.
- The containment equipment hatch and the containment personnel hatch were open.

At 9:20 a.m., EST, on March 20, 1990, a truck carrying gasoline, diesel oil, and lubricants in the plant low voltage switchyard backed into a support column for the feeder line supplying power to the Unit 1 A RAT and the Unit 2 B RAT. The insulator for the C phase of the feeder line fractured and initiated a phase-to-ground electrical fault. The fault resulted in a loss of power to the Unit 1 A RAT and the Unit 2 B RAT. The Unit 2 B EDG started and loaded on to the deenergized Unit 2 B vital bus. However, Unit 2, which was operating at 100% power, experienced a turbine trip and reactor trip because of an improperly connected (wrong tap) differential current transformer (DCT). The DCT initiated the trip when the current surge associated with the phase-to-ground fault was sensed. The Unit 2 trip was relatively uncomplicated.

Because both of the Unit 1 vital buses were cross-tied and being supplied by the Unit 1 A RAT, the loss of this transformer deenergized both vital buses. Deenergizing these buses resulted in the loss of power to the operating RHR pump. Since the Unit 1 B EDG was disassembled for maintenance, the emergency power supply for the B vital bus was unavailable and the standby B RHR pump could not be started.

The operational Unit 1 A EDG started on bus undervoltage but shut down automatically after 1 minute and 20 seconds, believed to be caused by sensor problems in the EDG control system. At 9:40 a.m., plant operators declared a "Site Area Emergency." (A loss of all onsite and offsite ac power at Vogtle for more than 15 minutes is classified as a "Site Emergency." The licensee made its declaration because all vital ac power was lost for greater than 15 minutes.)

Approximately 18 minutes after the first start of the A EDG, the operators

locally reset the load sequencer which restarted the A EDG on undervoltage. However, after 1 minute and 10 seconds, the diesel again shut down automatically. At 9:56 a.m., plant operators performed an "emergency" manual start of the diesel, which bypassed most of the diesel's protective trips. The diesel started and was loaded to the bus, the A RHR pump was restarted, and core cooling was reestablished to Unit 1. According to control room indication, RCS temperature increased from 90° to 136°F during the 41 minutes required to reenergize the A bus (1.12°F/minute). The "Site Area Emergency" was downgraded to an "Alert" at 10:15 a.m.

The critical path item for containment closure, the containment equipment hatch, was closed by approximately 10:40 a.m. This was within the time recommended by the NRC for the existing conditions of the RCS. (There are no regulatory requirements for a closed containment under these conditions.)

Plant personnel returned the Unit 1 B RAT to service after completing formal tagout removal procedures. However, attempts to energize the transformer were delayed for several minutes because of a sticking mechanical interlock in the control circuitry for a motor-operated disconnect switch on the high side of the B RAT. Power was restored to the B vital bus via the B RAT at 11:40 a.m. At 12:38 p.m., core cooling was shifted to the B RHR train to facilitate subsequent electrical alignment changes.

Throughout the event, non-vital power was continuously provided to Unit 1 from offsite sources via backfeed through the main generator transformer. Also, the Unit 2 electrical distribution system remained energized (aside from the momentary loss of power before the reactor trip). However, the Vogtle electrical system was not designed for interconnection of the Unit 1 vital buses to nonvital power or to the Unit 2 electrical buses. Therefore, there were no procedures to provide guidance on interconnecting the Unit 1 vital and nonvital buses or for interconnecting the Unit 1 electrical distribution system with the distribution system at Unit 2. (There are no regulatory requirements that direct the licensee to develop interconnection procedures.)

The licensee restarted Unit 2 and returned it to full power operation. Unit 1 remained shut down to investigate and correct the problems during the event and to complete refueling activities.

On March 20, 1990, NRC Region II sent a team to the site to review the event

and the actions taken by the licensee. On March 21, 1990, an Augmented Inspection Team (AIT) was formed consisting of Headquarters and Region II personnel. However, due to the number of past incidents that have occurred at various plants while in shutdown conditions and the potential for regulatory concerns, NRC management decided that the Vogtle event warranted the more formal and detailed review of an Incident Investigation Team (IIT). An IIT consisting of NRC members (Headquarters, Region I and Region V) and industry members (a member from the Institute of Nuclear Power Operations, and two consultants) was formed on March 23, 1990 subsuming the AIT.

The licensee agreed that Unit 1 would not be restarted until approved by NRC management. This approval was granted on April 13, 1990. Criticality was attained on April 16, 1990, and the plant was connected to the electrical grid on April 21, 1990.

The IIT remained at the Vogtle site until April 2, 1990. The Team returned to the NRC Incident Response Center in Bethesda, Maryland to continue evaluation of the event, formulate findings, and to prepare a formal report.

The Team completed its investigation on June 8, 1990. The Team report was issued in June 1990 as NUREG-1410, "Loss of Vital AC Power and the Residual Heat Removal System During Mid-Loop Operations at Vogtle Unit 1 on March 20, 1990." The report describes the investigation and the numerous findings and conclusions formulated by the Team. In summary, the Team concluded:

- Adequate precursor information was available to make this incident preventable.
- The Vogtle staff generally handled the incident well.
- Significant potential generic lessons were identified, including:
 - Approaches to shutdown risk management need to be developed.
 - There is incomplete implementation of existing analysis and guidance into procedures and training.
 - There is a need for additional analysis of reactor coolant system behavior following the loss of the residual heat removal system.
 - There is a need for further synthesis of existing operating information.
 - Emergency classification guidance and implementation problems exist.
 - The technical specifications do not take into consideration the risk associated with the various configurations of systems that may exist during shutdown conditions.

—At least some diesel generator control and annunciator systems are complex and may not be well understood.

Cause or causes.—The direct cause of the loss of offsite Class 1E ac power was (1) Driver error by backing the truck into the pole supporting a 230 kV line for the Unit 1 A RAT and the Unit 2 B RAT, and (2) violation of site safety rules that require a flagman for backing vehicles when viewing is impaired. The direct cause of the loss of onsite Class 1E ac power was the failure of the one operational EDG. The licensee concluded that the EDG trips were most likely due to faulty jacket water high temperature sensors.

Actions Taken to Prevent Recurrence

Licensee.—The licensee established a management policy on control and operation of vehicles. The defective EDG temperature sensors were replaced and a test program was planned to investigate the reliability of this type of temperature sensor under various conditions. The loss of offsite power (LOSP) diesel start and trip logic was modified for both Unit 1 and Unit 2 so that an automatic "emergency" start will occur upon LOSP; therefore, non-essential diesel engine trips are blocked upon LOSP. The Unit 1 A EDG test frequency was increased until seven consecutive valid tests were completed with no more than one valid failure in the last 20 valid tests.

NRC.—On April 16, 1990, the NRC issued Information Notice No. 90-25, "Loss of Vital AC Power with Subsequent Reactor Coolant System Heat-up," that described the Vogtle event. The Notice advised licensees that the Vogtle event reemphasized the need for careful planning of equipment outages during shutdown.

The NRC will review the IIT findings and will take actions, as appropriate. It is planned to include the resolution or disposition of any action items in the Office for Analysis and Evaluation of Operational Data (AEOD) Annual Reports (NUREG-1272 series).

Other NRC Licensees

90-2 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place.—January 17, 1990; Monongahela Valley Hospital; Monongahela, Pennsylvania.

Nature and probable consequences.—On January 17, 1990, the licensee notified NRC Region I by telephone that

earlier that day a cesium-137 brachytherapy source had become dislodged from its applicator while a patient was undergoing treatment for uterine cancer.

During the treatment, a malfunction of a remote afterloading brachytherapy irradiator occurred. The device, a Curietron 2E1000, was manufactured by CIS-U.S., a French-owned company. The malfunction resulted in the disconnection of the tube used to transfer the source (in this instance, cesium-137) from the shielded storage unit to the patient. The disconnect resulted in one of the cesium-137 sources being located for an undetermined time near the upper part of the patient's leg, rather than in the patient. The licensee initially estimated a range of potential unintended dose to the patient's leg from 23 rem to 23,700 rem, depending on the length of the exposure and the proximity of the source of the patient's leg. Three physical examinations of the patient have indicated no visible signs of radiation damage to date, which would indicate that the actual exposure was at the lower end of the range. Additional future examinations of the patient will be performed.

The licensee subsequently reported two additional equipment problems with this device on January 18, but neither incident resulted in further unintended radiation exposures.

Cause or causes.—Based upon visual examination of the failed equipment by Region I Inspectors dispatched to the site on January 19, 1990, the failure appeared to be faulty material used in the retaining ring of the connector which attached to the applicator, or inadequate equipment design.

Actions Taken to Prevent Recurrence

Licensee.—The device was removed from service for evaluation by the manufacturer. The faulty connectors have been replaced by a proven design.

NRC.—Region I performed a special inspection. An ARC medical consultant evaluated the exposure and concluded that the licensee's followup actions were appropriate.

The manufacturer informed Region I that it has distributed only one other similar device in the United States. Region I staff notified the licensee having the similar device of the problem that occurred at Monongahela Valley Hospital. That licensee has also replaced the connectors.

90-3 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place.—February 2, 1990; Ball Memorial Hospital; Muncie, Indiana.

Nature and probable consequences.—On February 2, 1990, the licensee reported that a therapeutic misadministration was discovered earlier that day in the treatment of a patient for lung cancer. A therapy dose had been administered to an area of the body other than the intended treatment area. The intended procedure called for 1,500 rem to the right lung area over a 25-hour period. A ribbon holding seven seeds (small sealed radiation sources) containing a total of 14.3 millicuries of iridium-192 was inserted into the patient's lung. Between the time the catheter was inserted and the time the iridium-192 seeds were placed in the catheter, a kink developed in the catheter. Because of the kink, the seeds were not inserted into the intended location in the lung, but rather remained in the pharynx area about 25 centimeters (about 10 inches) from the intended treatment area.

The licensee reported that no complications resulted from the misadministration. A medical consultant retained by the NRC concluded that the misadministration would not be of clinical significance because of the localized nature of the radiation dose and the area affected.

The procedure was repeated on the following day, and the intended lung area was successfully exposed.

Cause or causes.—The misadministration was caused when a kink developed in the catheter inserted into the patient's bronchial tubes. The kink prevented the ribbon containing the iridium-192 seeds from being fully inserted, and licensee personnel failed to detect that the ribbon was not properly placed.

Actions Taken to Prevent Recurrence

Licensee.—The licensee has revised its treatment procedure for patients with iridium-192 implants. After the ribbon containing the seeds is placed in a patient, its location will be verified using portable X-ray equipment.

NRC.—A special inspection was conducted to review the circumstances surrounding this misadministration. No violations of NRC regulations were identified. The NRC's medical consultant concluded that appropriate

procedures had been instituted to minimize the likelihood of a recurrence of a similar misadministration.

90-4 Medical Therapy Misadministrations

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place.—February 7, 1990, and March 15, 1990; University of Wisconsin; Madison, Wisconsin.

Nature and probable consequences.—The licensee notified NRC Region III on February 8 and March 16, 1990, of two therapy misadministrations that occurred on February 7 and March 15, 1990, respectively, due to a common cause (i.e., erroneous information being entered into a computer controlling the treatment location). The second event resulted in the wrong part of a patient's body receiving a therapy dose.

The treatments were performed using an afterloading device that inserts a high-intensity radiation source (nominally 10 curies of iridium-192) into a previously placed tube in the treatment area. The device permits high doses of radiation to a very localized area in a short time period. The placement and movement of the radiation source are controlled by a computer, allowing precise placement and timing.

In the first instance, a 42-year-old patient was undergoing treatment for vaginal cancer. The intended treatment schedule called for a total of four treatments of 1,620 rem each, two each to the left and right sides of the vagina, for a total of 3,240 rem per side. The first dose to the right side was correctly administered, but erroneous information was entered into the control computer for the second dose on February 7, 1990, resulting in a single dose of 2,500 rem to the right side treatment area; therefore, the total dosage to the right side was 4,120 rem—27 percent higher than prescribed. The error was detected and a revised prescription was administered to the left side.

The second misadministration involved a 66-year-old patient being treated for a bronchial tumor. Incorrect information was entered into the computer for the first of four 400 rem treatments, resulting in the incorrect placement of the iridium-192 source. The treated area was about 9 centimeters (about 3.5 inches) from the intended treatment point. When the error was discovered, the licensee repeated the procedure to provide the intended dose to the intended treatment area. The

remainder of the treatments were performed without incident.

In both misadministrations, the licensee does not expect any adverse medical effects.

Cause or causes.—Both misadministrations were caused by the entry of incorrect data into the treatment planning computer. The data from the planning computer was then transferred to a computerized treatment device. Because of the nature of the treatment procedure, dose calculations must be quickly made after the treatment tube has been inserted.

Actions Taken to Prevent Recurrence

Licensee.—The licensee prepared an extensive quality control/quality assurance program, including verification of key steps and calculations by a second qualified individual. More extensive training is to be provided to certain personnel involved in the treatment procedures, and the adequacy of training will be verified through examinations. The licensee is also formalizing the treatment procedures and better defining the responsibilities of the various personnel involved in the treatments.

NRC.—A special inspection was conducted by NRC Region III on March 26–28, 1990. As a result of the inspection findings, the licensee has modified its quality control/quality assurance program and undertaken other corrective actions. The changes have been incorporated into the facility's NRC license.

90-5 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place.—February 8, 1990; Cleveland Clinic Foundation; Cleveland, Ohio.

Nature and probable consequences.—On February 15, 1990, the licensee notified NRC Region III of a potential misadministration, involving cobalt-60 teletherapy, that occurred on February 8, 1990. The patient received a dose 50% greater than the physician's prescribed dose. On February 8, 1990, a physician prescribed nine treatments of cobalt-60 radiation for a 62-year-old patient suffering from cervical spine cancer. The patient was to receive 278 rem of radiation each day for nine consecutive days, beginning February 6. Following the first two treatments on February 6 and 7, the physician decided to stop the

treatments to reevaluate the cervical spine area diagnosis. On the evening of February 7, the physician wrote a "stop prescription" on the first page of the patient's treatment chart. On February 8, the technologist did not see the stop treatment order listed on the first page of the chart, but instead turned to the second page where no change was listed. The patient subsequently received an additional 278 rem of radiation to the cervical spine. The technologist, supervising technologist, and chief technologist became aware of the stop treatment order later that day.

The attending physician stated that he did not believe the additional treatment of 278 rem would be clinically harmful to the patient. He based his evaluation on the fact that, among other things, the dose rate was far below a dose rate that would be "deleterious" to spinal cord tissue, and because he still has the option of resuming treatments. The patient's symptoms have improved since the treatments have been halted. The physician plans to withhold further treatments if improvements continue.

Cause or causes—The licensee did not have a clear mechanism for documenting changes in prescriptions prior to subsequent treatment.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included: (1) Establishing a clear mechanism for documenting changes in prescriptions prior to subsequent treatment; and (2) conducting annual in-service training regarding misadministration reporting and review.

NRC—An NRC Region III inspector was sent to the hospital March 7-9, 1990, to review circumstances surrounding the misadministration. An Enforcement Conference was held with the licensee on May 2, 1990, to review the findings of the inspection and possible enforcement actions. The licensee's corrective actions are considered satisfactory.

90-8 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—February 16, 1990; Washington Hospital Center; Washington, DC.

Nature and probable consequences—On February 16, 1990, the licensee notified Region I by telephone that a therapeutic misadministration involving a teletherapy unit had occurred earlier that day. This was followed by a written report of the incident, dated February

23, 1990, and received by Region I on March 1, 1990.

The misadministration occurred when the wrong patient was administered 45 rem to the lung. The radiation therapy technologist called patient A's name, however, the wrong patient (patient B) responded. The technologist did not confirm the patient's identity with patient B's wrist band or the name on his hospital chart. The technologist questioned patient B when she could not find the lung treatment positioning marks. Patient B responded that the marks had been washed off. This same technologist also commented to patient B that he looked different from the Oncology Department treatment chart picture. (At the time, the technologist was actually looking at patient A's treatment chart.) Patient B responded that his appearance had changed since he lost his hair. The technologist positioned the patient and, together with a second technologist, who had returned from lunch, proceeded with the treatment. While patient B was undergoing treatment to the lung, the second technologist noticed that the name on patient B's hospital chart did not match the name on the department treatment chart and terminated the treatment. The patient was then identified as patient B who was at the hospital for radiation therapy to the brain.

The licensee has advised the NRC that no adverse effects are anticipated as a result of the misadministration.

Cause or cause—The cause was attributed to human error on the part of the radiation therapy technologist. The technologist did not verify the patient's identity with the available wrist band and patient's hospital chart.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included counseling of the technologist, re-instruction of all the therapy technologists on the proper method for patient identification, and discussion of the incident at a department staff meeting for additional emphasis on patient identification techniques.

NRC—Region I reviewed the circumstances surrounding this incident. The licensee's corrective actions are considered satisfactory.

90-7 Receipt of an Unshielded Radioactive Source at Amersham Corporation in Burlington, Massachusetts

The general AO criterion notes that an event involving moderate or more severe impact on public health or safety can be considered an abnormal

occurrence. In addition, one of the AO examples (i.e., exposure to an individual in an unrestricted area such that the whole body dose received exceeds 0.5 rem in one calendar year) is applicable to this event.

Date and place—Event discovered on March 8, 1990; Amersham Corporation, Burlington, Massachusetts.

Nature and probable consequences—On March 8, 1990, Amersham Corporation informed NRC Region I that a shipment of 14 Model 500-SU source changers (reportedly empty) received from its customer, NDI Corporation, Seoul, South Korea, contained an unshielded radioactive source. The wooden crate containing the source changers was not labelled as containing radioactive material. Shipping documentation indicated that the source changers were empty. However, routine surveys of the crate on its receipt at Amersham's Burlington, Massachusetts facility revealed a radiation level of about 100 millirem per hour near the back of the truck that delivered the package to Amersham and about 10 rem per hour near the package. Subsequent surveys revealed levels of about 150 rem/hr, a significant radiation level, at contact with the source changer (approximately 4" to 6" from source). The licensee subsequently retrieved the radiography source from an interior, unshielded part of the source changer.

Inquiries made by NRC and Amersham indicated that the package left Pusan, Korea by ship on January 29, 1990. The ship arrived in Los Angeles, California on February 11, 1990; the crate remained on the ship until February 13, when it was off-loaded and picked up by a local trucker and taken to a repackaging facility. The crate was subsequently transported to a Nova Transportation Services Company Container Freight Station in Compton, California on February 14, where it stayed until February 16, 1990, when it was transported by Covenant Transport, Inc. to the Patriot Trucking Co. warehouse in Boston, Massachusetts. The truck transporting the package made three stops en route to Boston, two in Pennsylvania and one in Maryland, arriving at the Patriot warehouse on February 22, 1990. The crate remained there until delivery to Amersham on March 8, 1990. The shipment from Los Angeles to Boston was made in-bond, such that the crate cleared U.S. Customs in Boston. No radioactive contamination was found in the source changer. The other source changers were found not to contain any radioactive material. The licensee stated

that the source had been cut from its pigtail connector.

Based on the nature and potential consequences of this event, and the generic questions generated by the event, an NRC Incident Investigation Team (IIT) was organized on March 9, 1990. The IIT was charged to: (a) Quickly resolve questions of radiation exposure; (b) determine what happened; (c) identify the probable causes as to why it happened; and (d) make appropriate findings and conclusions which would form the basis for any necessary follow-up actions.

One part of the Team began work on March 10, 1990 at the Amersham facility in Burlington. The other part of the Team began work on March 12, 1990, in Los Angeles, where the wooden crate containing the source changers had arrived.

The Team completed its investigation of the event in April 1990. The Team report was issued in May 1990 as NUREG-1405, "Inadvertent Shipment of a Radiographic Source from Korea to Amersham Corporation, in Burlington, Massachusetts." The principal findings and conclusions of the Team are as follows:

1. The cause of the incident was that a stored source was inadvertently left in a source changer when the device was returned from the end-user to Amersham's Korean distributor for shipment. Neither the end-user, Korea Industrial Testing Company, Ltd. (KIT), nor the distributor (shipper) NDI Corporation (NDI), used effective methods to ensure that there was no source in the changer. The inability of the two parties to detect the source was exacerbated by the fact that the connecting cable, or pigtail, had been removed, that is, cropped from the source. Events leading to the inclusion of the iridium-192 source in the shipment are also being investigated by the Ministry of Science and Technology, and the Korean Institute of Nuclear Safety, the responsible regulatory authorities in Korea.

2. The Team was able to identify the radiographic source as a 56-curie, iridium-192 source manufactured on April 13, 1989, by Industrial Nuclear Company, San Leandro, California. Using the manufacturer's decay curve for the iridium-192 source, the Team determined the source's activity at the times when potential exposures to individuals might have occurred. Independent measurements made of the source's activity at the Amersham Corporation facility were consistent with the values derived from the manufacturer's decay curve for the source.

3. While potential radiation exposure to the general public was possible, the number of individuals that could have been exposed was limited because the shipment was maintained "in-bond" from its arrival in Los Angeles on February 11, 1990, to the time it cleared U.S. Customs Service in Boston on March 7, 1990. The transport vehicle carrying the shipment from Los Angeles to Boston was driven across the country with infrequent stops of mostly short duration.

4. Although the maximum estimated potential whole-body radiation exposures range from 27 to 35 rem for the two long-distance drivers, and 0.5 to 5.6 rem for other individuals that may have been in close proximity to the source for extended periods of time, these estimates are not supported by cytogenetic studies done on the five individuals that had the highest potential for exposure. The cytogenetic data suggest that the source may have remained shielded so that no actual exposures occurred until the shipment was transferred from storage in Boston to Amersham's facility in Burlington, Massachusetts.

5. The safe handling and transportation of radioactive materials imported to the United States are highly dependent on the actions of foreign shippers and their agents to properly prepare packages for shipment, properly identify the contents, and accurately describe the contents in shipping documents. There are no DOT or NRC requirements for carriers or shipping agents to monitor or survey shipments during transit.

6. Carriers, freight forwarders, or shipping agents do not independently verify the accuracy of shipping documents for import shipments at the U.S. place of entry. Misclassified or mislabeled shipments are usually discovered by the receiving organization. There are no clear-cut requirements for a receiver to report to DOT or NRC instances where packages are not properly prepared for shipment or where the contents are not accurately identified. Current DOT regulations require carriers to report incidents where there is death, serious injury, or substantial property damage, breakage, spillage, or suspected radioactive contamination. NRC regulations require that licensees report any instance in which there is significant reduction in the effectiveness of any NRC-authorized packaging during use (10 CFR 71.95), if there is a high radiation level or contamination on packages when received (10 CFR 20.205), and for incidents in which there is the potential for significant exposure (10 CFR 20.403).

The Team could not determine whether NRC regulations would have required Amersham to report previous instances where cropped sources had been inadvertently shipped from the Republic of Korea. Although the shipment was mislabeled and misidentified in these instances, the sources arrived within the shielded source tubes of the source changers. The Team could find no evidence that the instances were reported to either the NRC or DOT. The incident being investigated, where the source was received in an unshielded position, was reported pursuant to NRC requirement, 10 CFR 20.403.

7. As an importer, Amersham was required to provide the shipper and the forwarding agent, at the place of entry into the United States, complete information on how to comply with DOT regulations. The instructions provided to the shipper by Amersham for classifying and preparing the source changers for shipment were incomplete. While instructions were included for preparing the shipment of the source changers as an "excepted" package, no specific directions were provided for the case where the empty source changers did not meet the requirements for an "excepted" package. In spite of the inadvertent inclusion of an iridium-192 source, the shipment of empty source changers was improperly prepared for transport. Because the surface radiation level of the shipment exceeded 0.5 mrem/hr, it was required to be shipped within the United States as a Type A package. Lack of instructions for preparing a Type A package may have contributed to the misclassification of the package as an excepted package. However, proper classification of the shipment as Type A would probably not have prevented the incident.

8. Amersham's instructions for returning an empty Model 500-SU source changer were made available to NDI and KIT and were adequate for determining whether a source changer contained an authorized (i.e., uncropped) source, since a visual examination would detect the presence of a pigtail. However, in view of previous incidents involving the receipt by Amersham of cropped sources from the Republic of Korea, the instructions were deficient in that they did not anticipate that sources without pigtails might be stored in the source changer and not removed before shipment. Specific instructions requiring both a radiation survey and a probe of the source tubes, if implemented by the end-user, would have prevented this incident.

9. Amersham did not provide "shipper" instructions to the freight forwarder at the place of entry into the United States (Los Angeles), as required, but rather to its Customs broker in Boston. In this case, Amersham provided an erroneous instruction to transport the package as an "excepted" package.

10. The Team found no violation of NRC regulations with respect to the receipt of the source changer shipment at Amersham. NRC's regulations do not apply to the shipment of these source changers across the United States, other than 10 CFR part 110.27, which specifies requirements for importing byproduct material. Shipment of the source changers within the United States was subject to DOT transportation regulations.

11. DOT regulations permit the use of an NRC-certified Type B package¹, such as the Model 500-SU source changer, for shipment of a Type A² quantity, for example, either as empty (with the DU shielding) or with source totaling less than 20 curies. However, DOT regulations are ambiguous as to whether an NRC-certified Type B package must be used in strict accordance with the NRC certificate for shipment of Type A quantities or whether the package need only comply with the general requirements for Type A packages in the DOT regulations. Thus, the Team could not determine whether the source involved in this incident could have been shipped in the Model 500-SU source changer as a Type A quantity, because the source (with or without the pigtail) is not authorized in the NRC certificate.

12. The 14 source changers involved in the incident did not conform to the drawings referenced in NRC Certificate of Compliance 9006, Revision No. 9, in that all of these source changers were constructed without a source cable locking assembly. In addition, 6 of the 14 source changers were not constructed according to the dimensions specified in the drawings referenced in the Certificate of Compliance. However, the Team determined that these discrepancies did not contribute to the cause of this incident.

Cause or causes—The cause of the incident is described above in Item 1 of the Team's findings and conclusions.

¹ A Type B package is required to transport iridium-192 in encapsulated sources exceeding 20 curies.

² A Type A quantity for iridium-192 in encapsulated sources is less than 20 curies.

Actions Taken to Prevent Recurrence

Based on the findings and conclusions of the IIT, the NRC Executive Director for Operations has assigned staff responsibilities for generic and facility-specific actions to be taken. It is planned to include the resolution or disposition of each IIT finding and conclusion in the Office of Analysis and Evaluation of Operation Data (AEOD) Annual Reports (NUREG-1272 series).

90-8 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—March 16, 1990; Riverside Regional Medical Center; Newport News, Virginia.

Nature and probable consequences—On March 16, 1990, the licensee notified NRC Region II that a therapy misadministration had occurred earlier that day when the wrong patient was administered 296 rads (from a teletherapy unit) to the midline of the brain. The radiation therapy technologist had gone to the waiting room and called for the patient by surname only. However, the technologist did not properly identify the patient prior to treatment by comparing the patient to the photograph which is affixed to the medical chart. The patients in question had the same last name and first initial, were of the same race and gender, were of approximately the same age, had approximately the same treatment region, same treatment technologist, and approximately the same appointment time. The patient for whom the treatment was intended was late for his appointment and was not present when called for in the waiting area. The wrong patient, who was in for followup examination only, responded to the call.

The licensee has advised the NRC that no adverse effects are anticipated as a result of the misadministration.

Cause or causes—The cause is attributed to human error by the licensee's radiation therapy staff. The technologists did not confirm the identity of the patient by comparing the patient to the photograph affixed to the medical chart.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included strengthening of their patient identification policies to add a photograph to the therapy setup sheet for the patient, and use of skin marks to identify the treatment area, where

appropriate. The entire radiation therapy staff was trained in the revised procedures for patient identification.

NRC—Region II conducted a special inspection on March 19, 1990, to review the circumstances associated with the misadministration, and to review the licensee's immediate corrective actions. Region II conducted an Enforcement Conference with the licensee on April 12, 1990, to discuss the event, and agreed with the corrective actions to prevent recurrence. One violation of NRC requirements was identified.

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90-9 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—March 16, 1990; John F. Kennedy Memorial Hospital; Edison, New Jersey.

Nature and probable consequences—On March 16, 1990, the licensee notified NRC Region I that earlier that day a patient, receiving an endobronchial iridium-192 treatment, received an unintended therapy dose to the face. The misadministration was estimated to have occurred from as early as 10:30 p.m. March 15, to midnight when it was first observed, and continued to approximately 4:45 a.m. on March 16 when the iridium was removed to a lead shielded container.

The misadministration occurred when a ribbon containing 25 seeds with 3.5 millicuries each of iridium-192, inserted into a previously placed endotracheal catheter, became displaced. The catheter, inserted in the patient's bronchi, remained in place. However, the ribbon containing the iridium seeds became completely dislodged from the catheter outside the lung and ultimately came to rest beside the patient's face. The duty nurse noticed the dislodged source about midnight, but took no action at the time. The ribbon remained unsecured until 2 a.m. when the duty nurse taped the unsecured end, which contained the iridium seeds, to the left side of the patient's face where it remained for approximately 3 hours. To tape the ribbon to the patient's face, the nurse handled the active part of the ribbon with unshielded fingers.

At about 4:15 a.m., the Charge Nurse attended the patient and noticed the dislodged source. The Charge Nurse called the Radiation Safety Officer who directed removal of the ribbon from the patient, using a remote handling tool,

placed the source in a shielded container.

The licensee made preliminary dose estimates of 1,032 rem to the left side of the patient's face, 282 rem to the eyes, and 357 rem to the scalp since the patient at one point folded the ribbon in her hair. The duty nurse who handled the ribbon received an estimated 17.8 rem to the fingers.

At 7:30 a.m. on March 16, the radiation oncologist rethreaded the iridium ribbon through the catheter and the patient's endobronchial treatment was continued, ending at 9:30 p.m. the same day. The patient was discharged from the hospital on March 20, 1990. The licensee advised the NRC that no adverse effects were anticipated as a result of the misadministration.

However, at 1 a.m. on March 22, 1990, the patient was readmitted to the hospital through the Emergency Room complaining of burning eyeballs and sensitivity to light. The patient's eyes were medicated and bandaged. Later that day, the patient was seen by an ophthalmologist who diagnosed the condition as keratoconjunctivitis; the doctor said that this condition could be viral-related but did not rule out the possibility of radiation-induced conjunctivitis. The patient was discharged from the hospital the following day.

An NRC medical consultant reviewed the event and concluded that the patient should not have any long term adverse effects except for the remote possibility of change in the lens of the eye.

Cause or causes—The cause of the event was due to the source becoming completely dislodged outside the catheter, and the inappropriate response of the duty nurse to the dislodged source. The nurse's response resulted in a significant, unnecessary radiation dose to the patient, as well as an unnecessary dose to the nurse's fingers.

The nurse had received training in the equipment and procedures in March 1988, two years prior to assignment to this, the nurse's first case, in March 1990. Refresher training given in December 1989 did not include visuals or handling of simulated brachytherapy seeds. Therefore, the nurse did not recognize the configuration of the ribbon containing the radioactive seeds. The licensee's procedure for brachytherapy implants requires that shift nurses be briefed on radiation safety precautions related to the specific case. The procedure requires that initially, this briefing be given by the Radiation Safety Officer to the nurses on duty at the time of the implant. They then pass this information on to the succeeding shifts, etc. In this event, the

briefing was not done for the shifts subsequent to the initial shift.

Actions Taken to Prevent Recurrence

Licensee—The licensee's corrective actions included: (1) Review of the content of the training course; (2) provision during training of visuals of each type of brachytherapy configuration and handling; (3) a Post Test with a minimal score of 80%—this includes retraining and retesting, if necessary, to obtain 80%; (4) a picture or sketch on each patient's chart and/or each patient's door of the configuration of the brachytherapy implant; (5) exploration of means to make sources more secure in the implant site; (6) deferring the nurse from working with brachytherapy patients until retraining takes place; and, (7) formulation of a subcommittee of the Radiation Safety Committee to investigate this incident and render a full report to the Radiation Safety Committee.

NRC—NRC Region I performed an inspection to review the circumstances associated with the event. The licensee's corrective actions were considered to be satisfactory. However, two violations of NRC requirements were identified, i.e., (1) The duty nurse had not been adequately briefed concerning radiation safety precautions associated with care of the patient, and (2) the Radiation Safety Officer had not established a procedure for performing a radiation survey or evaluation prior to and upon entry into the room of a brachytherapy implant patient. On May 21, 1990, the NRC issued to the licensee a notice of violation and proposed civil penalty in the amount of \$1,250. The licensee paid the civil penalty.

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390-10 Medical Therapy Misadministration

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

Date and place—March 19, 1990; St. Mary's Medical Center; Saginaw, Michigan.

Nature and probable consequences—On March 19, 1990, the licensee reported to NRC Region III that earlier that day a 46-year-old patient received a therapeutic radiation dose of 250 rem to the thoracic portion of the spine rather than to the intended treatment area (i.e., the lumbar portion, which is a lower portion of the spine).

The patient had previously received a total radiation dose of about 4,500 rem to the thoracic portion of the spine during treatments in April 1986 and

December 1987. In March 1990, a prescription for further treatment, this time to the lumbar portion of the spine, was prepared. The treatment plan was prepared and an X-ray of the treatment area was taken. The treatment plan called for a series of 31 treatments, of 250 rem each, administered with a cobalt-60 teletherapy unit. On March 19, 1990, the patient received the first treatment of the series, but the radiation technologist mistakenly administered the 250 rem dose to the thoracic spine rather than the intended lumbar portion of the spine. The technologist then reviewed the patient's chart and immediately realized the error.

The unintended treatment of the thoracic area brought the total radiation dose to that area to approximately 4,800 rem. The licensee stated that there is a low probability of radiation damage to the spinal cord from a total radiation dose of this magnitude. The patient will be monitored for possible future conditions, but no medical treatment is required for the additional radiation dose.

Cause or causes—The cause was due to human error in failing to follow procedures. The radiation technologist, in preparing the first treatment procedure, asked the patient to identify the treatment area. The patient indicated an area of the thoracic spine which contained a tattoo from the earlier treatments.

The technologist failed to follow normal treatment procedures that require technologists to review the patient's chart, examine the X-ray film showing the treatment area, and obtain verification of the treatment setup by a second technologist, prior to initiating treatment. The patient's chart and X-ray film clearly showed the correct treatment area.

Actions Taken to Prevent Recurrence

Licensee—The licensee provided training to the technologist involved, and other staff technologists, on the correct treatment procedures and quality assurance measures, including verification of treatment setups by a second qualified individual. The licensee also submitted its quality assurance procedures to be incorporated into its NRC license in accordance with the NRC Confirmatory Action Letter (CAL) described below.

NCR—The NRC retained a medical consultant to evaluate the circumstances of the misadministration and possible consequences. The consultant agreed with the licensee's evaluation. A special inspection was conducted by NRC Region III in April 1990 to review the

incident. The licensee's corrective actions were considered satisfactory. On April 4, 1990, a CAL was issued by NRC Region III to document the licensee's agreement to assure that two individuals review dose calculations and patient setups for all cobalt-60 teletherapy procedures. The licensee submitted its quality assurance procedures to the NRC and they have been incorporated into the facility's NRC license.

Dated at Rockville, MD, this 24th day of July 1990.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-17678 Filed 7-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-412]

**Duquesne Light Co., et al.;
Consideration of Issuance of
Amendment to Facility Operating
License and Proposed No Significant
Hazards Consideration Determination
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-73 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit No. 2, located in Beaver County, Pennsylvania.

The proposed amendment would modify the Appendix A Technical Specifications (TSs) for the Overpressure Protection System. Specifically, the proposed amendment would delete Surveillance Requirement 4.9.9.3.1.d which requires stroking each operable power-operated relief value (PORV) each time the plant enters MODE 5 unless stroke testing was performed previously on the PORV within three months.

Before 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.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment 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.

The proposed change does not involve a significant hazards consideration because:

(1) If the proposed amendment is incorporated in the TSs, the PORVs still will be demonstrated operable by periodic stroke testing as required by TS Surveillance Requirement 4.4.11 and 4.0.5, thus, the Cold Overpressure Protection System (COPPS) will be demonstrated operable periodically. The proposed amendment merely deletes a redundant PORV stroke test. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not involve any change in plant equipment or design. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve any change in design capability, availability, or operating characteristics of the COPPS. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

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 any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

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. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 29, 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 petition for leave to intervene. Request 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 B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. 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 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 providing 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.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the

license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

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., 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 John F. Stolz: (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 Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW, Washington, DC 20037, 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 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).

For further details with respect to this action, see the application for amendment dated June 11, 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 B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 24th day of July, 1990.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate,
Division of Reactor Projects, Office of
Nuclear Reactor Regulation.

[FR Doc. 90-17676 Filed 7-27-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

**Entergy Operations, Inc., et al.;
Withdrawal of Application for
Amendment to Facility Operating
License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the licensee (Systems Energy Resources, Inc. before June 6, 1990, and Entergy Operations, Inc. on and after that date) to withdraw the August 31, 1988 application for proposed amendment, as supplemented by March 24, 1989, to Facility Operating License No. NPF-29 for the Grand Gulf Nuclear Station, Unit No. 1, located in Claiborne County, Mississippi.

The proposed amendment, submitted by letters dated August 3, 1988, and March 24, 1989, would have changed the Technical Specifications by deleting certain test, vent and drain valves from Technical Specification (TS) Table 3.6.4-1. The leak tight integrity of these valves would have been assured by administrative control.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on September 23, 1988 (53 FR 37072). By letter dated June 27, 1990, the licensee withdrew the proposed change because the containment isolation valves listing of Table 3.6.4-1 will be relocated from the TS as part of the technical specifications improvement program.

For further details with respect to this action, see the application for amendment dated August 31, 1988, as supplement March 24, 1989, and the licensee's letter dated June 27, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 17th day of July 1990.

For the Nuclear Regulatory Commission.
Lester L. Kintner,
Senior Project Manager, Project Directorate
IV-1, Division of Reactor Projects—III, IV, V
and Special Projects, Office of Nuclear
Reactor Regulation.

[FR Doc. 90-17677 Filed 7-27-90; 8:45 am]

BILLING CODE 1590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Approval of Special Withdrawal Liability Rules; Sheet Metal Workers Local Union No. 80 Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has received a request from the Sheet Metal Workers Local Union No. 80 for approval of plan amendments providing for special withdrawal liability rules. Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules, if the PBGC determines that the rules apply to an industry in which the characteristics that would make use of the special rules appropriate are clearly shown, and that, in each instance, the rule would not pose a significant risk to the PBGC. The PBGC has prescribed such regulations at 29 CFR part 2645. Pursuant to those regulations, as soon as practicable after receiving a request for approval of a plan amendment containing all the required information, the PBGC shall publish a notice of the pendency of the request in the *Federal Register*, containing a summary of the request and inviting the submission of written comments. This notice is to advise interested persons of a request for approval of special withdrawal liability rules and to invite interested persons to submit written comments on it, pursuant to 29 CFR 2645.4(b).

DATES: Comments must be submitted on or before September 13, 1990.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, Attn: Deborah C. Murphy. The complete request for approval is available for public

inspection between the hours of 9 a.m. and 4 p.m. on business days at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address. Any comments received will also be made available to the public at the above address at those times.

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:

Background

Under section 4203(a) of ERISA, a complete withdrawal from a multiemployer plan occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205, a partial withdrawal occurs, generally, when: (a) An employer reduces contributions by seventy percent in each of three consecutive years; or, (b) permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location; or, (c) permanently ceases to have an obligation to contribute for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. Thus, the general rules on complete and partial withdrawal identify events that normally result in a loss to the plan's contribution base.

However, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute does not normally weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, ERISA section 4203(b) provides a special complete withdrawal rule. Under section 4203(b)(2), a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work with five years without renewing the obligation to contribute at the time

of resumption. Section 4203(c)(1) applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) defines a permanent cessation of the obligation to contribute as a withdrawal, regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. ERISA section 4208(d)(1) provides that an employer to which section 4203(b) (relating to the building and construction industry) applies is liable for partial withdrawal "only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required." Under ERISA section 4208(d)(2), an employer to which section 4203(c) (relating to the entertainment industry) applies has no liability for a partial withdrawal "except under the conditions and to the extent prescribed by the (PBGC) by regulation."

ERISA section 4203(f) provides that the PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203 (b) and (c) for the construction and entertainment industries. Section 4203(f)(2) provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which, as determined by the PBGC, the characteristics that would make use of such rules appropriate are clearly shown, and only if the PBGC determines, in each instance in which special withdrawal liability rules are permitted, that use of such rules will not pose a significant risk to the PBGC under title IV of ERISA. Section 4208(e)(3) provides that the PBGC shall prescribe by regulation a procedure by which a plan may by amendment adopt rules for the reduction or elimination of partial withdrawal liability under conditions other than those described in section 4208(e) (1) and (2), subject to the approval of the PBGC based on its determination that the adoption of such rules is consistent with the purposes of title IV of ERISA.

The PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 CFR part 2645) prescribe procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4203(e)(3), request the PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 2645.2(a), a complete withdrawal rule adopted pursuant to part 2645 must be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to part 2645 must be consistent with the complete withdrawal rule adopted by the plan. Pursuant to 29 CFR 2645.2(b), a plan amendment adopted pursuant to part 2645 may cover an entire industry or industries, or may be limited to a segment of an industry, and may apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

Each request for approval of a plan amendment establishing special withdrawal liability rules must contain the information specified in § 2645.3(d). In acting on such a request, 29 CFR 2645.4(a) provides that the PBGC shall approve a plan amendment providing for the application of special withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(A) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate, and

(B) Will not pose a significant risk to the insurance system.

Finally, § 2645.4(b) requires the PBGC to publish a notice of the pendency of a request for approval of a plan amendment containing all the information required under § 2645.3 in the *Federal Register*, and to provide interested parties with an opportunity to comment on the request.

The Request

The PBGC has received a request from the Sheet Metal Workers Local Union No. 80 Pension Fund ("Fund") for approval of a plan amendment providing for special withdrawal liability rules for contributing employers that are engaged in the sheet metal industry (including both fabrication and installation), as defined in the amendment, whether or not they are construction industry employers as defined in ERISA section 4203(b)(1)(A). The request sets forth the following information.

The Fund

The Fund is maintained pursuant to collective bargaining agreements between Sheet Metal Workers Local

Union No. 80 and employers engaged in the sheet metal industry in the Greater Detroit area. The sheet metal industry covers the fabrication of sheet metal and related products in shops, and the installation of sheet metal and related products on construction job sites.

Approximately 120 employers contribute to the Fund. Almost all of the contributing employers perform only installation work and are accordingly considered to be construction employers, as defined in ERISA section 4203(b)(1)(A), and thus covered by the construction industry withdrawal rules in section 4203(b). About 10 contributing employers, however, are wholly or partly engaged in the fabrication of sheet metal products that are installed at construction sites by their own employees or by the employees of other employers. Only 3 of these employers employ fabrication workers only; the rest employ both fabrication and installation workers. The employers that perform fabrication work only are considered not to be construction employers as defined in section 4203(b)(1)(A) and are therefore subject to the general withdrawal liability rules of ERISA sections 4203(a) and 4205. The employers that performs both fabrication and installation work may or may not be considered construction employers, depending on the proportion of fabrication and installation employees employed. Currently, about 87 percent of the Fund's active employees are installation workers and about 13 percent are fabrication workers. The request stresses, however, that approval of the Fund's special withdrawal rule is expected to lead to the unionization and consequent inclusion in the Fund of a number of currently non-union production shops.

The Fund's contribution rate for construction workers is \$2.69 per hour, and they accrue a monthly benefit of \$45 per year of credited service. The contribution rate for production workers is from 40 to 60 cents per hour, and they accrue a monthly benefit of between \$20.30 and \$31.00 per year of credited service.

As of June 1, 1989, Fund assets (at market value) plus accrued contributions were \$118.4 million, equal to 85 percent of the present value of vested benefits (\$139.2 million). During the plan year ending May 31, 1989, the Fund received \$8.1 million in contributions and paid \$8.2 million in benefits. For the previous plan year, the Fund received \$5.7 million in contributions and had net dividends and interest income of \$7.0 million; benefits paid in that year totaled \$7.9 million,

and administrative expenses were \$800,000.

During the 1985-1989 period, Fund assets (at market value) plus accrued contributions increased from \$79.8 million to \$118.4 million, an increase of nearly 50 percent. Employer contributions increased by 15 percent over that period, from \$5.3 million to \$6.1 million, while benefits paid increased by about 75 percent, from \$4.7 million to \$8.2 million. Between 1984 and 1989, the number of active employees increased from 1,841 to 1,892, reaching a low of 1,738 in 1985 and a high of 1,911 in 1988. The number of retirees increased from 1,092 to 1,387 over the same period.

Industry Characteristics ¹

Since the installation of sheet metal and related products is considered to be part of the construction industry, and thus covered by the construction industry withdrawal rule in ERISA section 4203(b), the Fund's request for approval of its special withdrawal rule focuses on the production segment of the sheet metal industry in the Greater Detroit area. The production segment generally covers the fabrication of sheet metal and related products in shops not located at construction sites. As noted above, this segment of the industry accounts for about 13 percent of the active employees covered by the Fund and less than 10 percent of the employers obligated to contribute to the Fund.

According to the request, production work had historically been done by journeymen sheet metal workers employed by sheet metal contractors. Each contractor traditionally manufactured its own products, which were then installed at the job site by its employees. When sheet metal journeymen's wages rose to levels that were no longer competitive with the wages at non-union sheet metal manufacturing facilities, the Sheet Metal Workers International Association, with which Local 80 is affiliated, created a production worker classification with a substantially lower wage and fringe benefit rate than the existing sheet metal journeymen's rate. This classification improved the union shops' ability to compete with non-union firms. The production shops covered by the Fund are thus an outgrowth of the sheet metal contracting industry in the Detroit area, and they continue to supply

¹ The PBGC has made no independent investigation of industry characteristics, and the following description is based on information supplied by the Fund.

materials for sheet metal contractors working in the area.

In addition to these evolutionary ties between sheet metal production and installation, the request cites several other factors to show the appropriateness of special withdrawal rules for the production segment of the industry. One such factor is that the collective bargaining agreement covering sheet metal construction work in Local 80's geographic jurisdiction requires that all sheet metal products fabricated outside of the geographic jurisdiction, for installation within the jurisdiction, must be produced by workers whose wage scale (including fringe benefits) is not less than the higher of the wage scales applicable to the area in which the production occurs and the Local 80 area.

Another factor cited by the request is the cost disadvantage that non-local

production shops would have in competing with local shops for work in the Detroit area. Non-local shops would have higher costs because they would have to transport the finished product over a greater distance, and because their salesmen would incur greater travel expenses in traveling between the out-of-area shops and the Detroit area offices and construction sites of their contractor customers.

The request concludes that the foregoing considerations show that the production segment of the sheet metal industry in the Greater Detroit area is local in nature, and that approval of the Fund's special withdrawal liability rules will not endanger the Fund by enabling the fabrication of sheet metal and related products for installation in the greater Detroit area to shift outside of that area without compensation to the Fund in the form of withdrawal liability.

Actuarial Data

As part of the request, the Fund submitted actuarial valuation reports for the 1985-1989 period and other financial data. The results are summarized in the table below.

Fund costs for minimum funding purposes are determined using the unit credit actuarial cost method. The funded ratio (that is, the ratio of the value of plan assets (at market) plus accrued contributions to the value of vested benefits) ranged between 76 percent and 100 percent during the 1985-1989 period and was 85 percent at the end of the period. There was a relatively large decline (from about 100 percent to about 76 percent) between 1987 and 1988 due to benefit improvements, unfavorable investment performance, and lower-than-expected turnover.

SUMMARY OF ACTUARIAL VALUATION RESULTS SHEET METAL WORKERS LOCAL UNION NO. 80 PENSION FUND

	6/85	6/86	6/87	6/88	6/89
A. Number of participants:					
1. Active	1,738	1,865	1,880	1,911	1,892
2. Terminated.....	457	531	471	458	440
3. Retirees and beneficiaries	1,145	1,175	1,229	1,313	1,387
4. Total	3,340	3,571	3,580	3,682	3,719
B. Plan assets and vested liabilities (\$000's):					
1. Plan assets and accrued contr. ¹	\$79,768	\$98,961	\$108,740	\$106,939	\$118,374
2. Liability for vested benefits.....	84,329	109,539	109,214	141,241	139,170
3. Assumed interest rate	6.5%	6.5%	7%	7%	7.5%
Ratio of (1)/(2).....	95%	90%	100%	76%	58%
C. Annual contributions and benefits (\$000's) ²:					
	FY '85	FY '86	FY '87	FY '88	FY '89
1. Employer contributions.....	\$5,301	\$6,443	\$5,805	\$5,709	\$6,070
2. Benefits paid	4,748	5,305	6,678	7,948	8,186
Ratio of (C.2) to (B.1)	6%	5%	6%	7%	7%

¹ At market.

² For the plan year preceding the valuation year.

Special Withdrawal Liability Rules

The Fund has adopted an amendment prescribing special withdrawal liability rules. The proposed amendment, if approved by the PBGC, is to be effective January 1, 1989. The proposed amendment reads as follows:

5.16 Withdrawal Liability. This Section shall apply to all contributing employers engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work and all other materials used in lieu thereof and of all airveyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of

all air handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection including those taken from original architectural and engineering drawings or sketches, within the geographic jurisdiction of the Union. For purposes of determining whether an Employer who is engaged in the sheet metal industry, as herein defined, has incurred a complete withdrawal, as defined in ERISA, section 4203(a), as amended, or a partial withdrawal, as defined in ERISA section 4205(a), as amended, the construction industry provisions of ERISA section 4203(b), as amended, shall be applied without regard to the proportion of construction industry employees to non-construction industry employees employed by such withdrawing employer. The foregoing notwithstanding, this Section shall not apply to any Employer which withdraws

from the Fund as a result of the sale of its assets, as defined in ERISA section 4204(a), as amended, or in case of a mass withdrawal, as defined in ERISA section 4041A, as amended.

Notice

The request includes a certification that a notice of the adoption of the amendment by the Fund and of the submission of this request for PBGC approval has been mailed to all employers who have an obligation to contribute under the Fund and to the employee organization representing employees covered under the Fund.

Comments

All interested persons are invited to submit written comments concerning the pending request to the PBGC at the above address, on or before September 13, 1990. All comments will be made a

part of the record. Comments received, as well as the application for approval of the plan amendments, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 18th day of July 1989.

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

[FR Doc. 90-17648 Filed 7-27-90; 8:45 am]

BILLING CODE 7708-01-M

POSTAL SERVICE

Proposed International Surface Air Lift Service and Rate Changes

AGENCY: Postal Service.

ACTION: Corrections.

SUMMARY: The Postal Service is correcting several entries to ISAL Rate Groups in the Proposed International Surface Air Lift Service and Rate Changes, which appeared in the *Federal Register* on Friday, July 6, 1990, (55 FR 27915.)

FOR FURTHER INFORMATION CONTACT:

John F. Alepa (202) 268-2650.

In proposed changes document 90-15625 in the issue of Friday, July 6, 1990, make the following corrections:

ISAL Rate Groups (Corrected)

1. On page 27915, second column, line 17 "pieces" was misspelled.
2. On page 27916 in Group 1, "Singapore" was omitted.
3. On the same page, in Group 3, first column, delete "Emirates Venequela" and "United Arab Republic."
4. On the same page, in Group 3, second column, add "Venezuela" and "United Arab Emirates."

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-17695 Filed 7-27-90; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28253; File No. SR-DGOC-90-05]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Delta Government Options Corporation Relating to the Definition of Expiration Date

On May 29, 1990, the Delta Government Options Corporation ("Delta") filed a proposed rule change (SR-DGOC-90-05) pursuant to section

19(b)(1) of the Securities Exchange Act of 1934¹ that would revise the expiration date for options traded through Delta's system. On June 19, 1990, Delta amended the proposal.² Notice of the proposed rule change appeared in the *Federal Register* on July 10, 1990.³ Three letters of comment were received. As discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description of the Proposal

The primary purpose of Delta's proposed rule change is to conform its definition of "expiration date" to that of the Chicago Board of Trade ("CBOT"). Under Delta's current rules, the expiration date for short-dated options is the first Friday of a calendar month following the date of issuance of such options.⁴ Delta's proposal would revise this definition to provide that if such Friday is not a business day, then the expiration date for such options would be the preceding business day. Similarly, Delta's current rules provide that the expiration date for all options other than short-dated options ("long-dated options") is the third Friday of the expiration month.⁵ Delta's proposal would alter the expiration date for these options to the last Friday during an expiration month where such Friday precedes at least five remaining business days within such calendar month. However, if such last Friday is not a business day, or there is a Friday which is not a business day within such calendar month, the expiration date shall be the business day preceding such Friday.

Finally, Delta's proposal revises the definition of "short-dated options" to provide that such options are issuable commencing the Monday prior to the expiration date of regularly scheduled long-dated options expiring that month.

II. Delta's Rationale

Delta believes the proposed rule change is consistent with section 17A of the Act and the rules and regulations thereunder applicable to Delta because the proposed rule change will permit more utilization of Delta's system by those participants who prefer to trade in options for hedging purposes or speculation. In particular, the tailoring

of the options expiration on the basis proposed by Delta will afford participants additional flexibility to adjust options duration in relation to their overall treasury security portfolios. Moreover, Delta also believes that the proposal will enable participants to submit, for processing at Delta, over-the-counter U.S. Treasury option trades that, prior to this proposal, could not be submitted because their stated expiration date was not available through Delta. Accordingly, Delta believes that its proposal will allow for the automated clearance and settlement of securities transactions that otherwise would have been cleared via a decentralized, inefficient and labor-intensive process.

III. Comments

Delta received three letters of comment on the proposal. In general, the commentators supported Delta's proposal and stated that concurrent expiration dates between Delta and CBOT would lead to more efficient options pricing. The commentators also noted that Delta's and CBOT's expiration dates would not coincide in August 1990, and urged Delta to seek expedited approval of its proposal.⁶

IV. Discussion

Section 17A of the Act provides that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions.⁷ As described in more detail below, the Commission believes that Delta's proposal meets this standard by allowing its participants to submit a greater number of transactions through its system, thus increasing the number of transactions in over-the-counter options on U.S. Treasury securities that are subject to Delta's safe and efficient clearance and settlement procedures.⁸

As noted above, Delta has requested that the proposed rule change be given accelerated effectiveness, prior to the thirtieth day after the date of publication of notice of the filing, pursuant to section 19(b)(2) of the Act. In this regard, Delta has informed the Commission that many of its participants utilize hedging strategies

¹ 15 U.S.C. 78s(b)(1) (1982).

² See letter from David Maloy, President, Delta, to Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, dated June 19, 1990, requesting accelerated approval of Delta's proposal.

³ See Securities Exchange Act Release No. 28173 (July 3, 1990); 55 FR 28329.

⁴ See Delta rule 1001.

⁵ *Id.*

⁶ See letters from Andrew T. Vaden, Vice President, Morgan Stanley & Co., Inc., Perry J. Vieth, Vice President, Fuji Securities Inc. and Johann H. W. Christofferson, Managing Director, The Bank of Boston, to David Maloy, President, Delta, dated June 13, June 17 and June 6, 1990, respectively.

⁷ See 15 U.S.C. 78q-1(b)(3)(F) (1982).

⁸ For a more complete description of Delta's clearance and settlement procedures, see Securities Exchange Act Release No. 27611 (January 12, 1990), 55 FR 1890.

involving options on U.S. treasury note and bond futures traded on the CBOT and options on U.S. treasury securities traded through Delta's system. However, because Delta's current definition of "expiration date" is different from that of the CBOT, the expiration date for options on U.S. treasury note and bond futures trades at the CBOT may differ by as much as one week from the expiration date for options on U.S. treasury securities traded through Delta's system during certain months of the year. These asynchronous expiration dates expose Delta's participants to the risk of holding an unhedged options position during certain months of the year. Instead of assuming this risk, these participants may refrain from using Delta's system during such months and may execute transactions in over-the-counter options on U.S. treasury securities outside Delta's system instead.

As commentators have noted, August 1990 is a month in which the CBOT's expiration date for options on U.S. treasury note and bond futures differs from the expiration date for options on U.S. treasury securities traded through Delta's system.⁹ As a result, the current volume of trading through Delta's system is significantly below normal levels. Consequently, in light of the comments received, the need for Delta to encourage the utilization of its system and the benefits provided therefrom, the Commission believes that "good cause" exists, pursuant to section 19(b)(2) of the Act, for approving Delta's proposal prior to the thirtieth day after the date of publication of notice of the filing thereof.

IV. Conclusion

For the reasons stated above, the Commission finds that Delta's proposal is consistent with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-DGOC-90-05) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 23, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-17613 Filed 7-27-90; 8:45 am]

BILLING CODE 8010-01-M

⁹ The Commission also notes that August 1990 is the first month since Delta's inception that this situation has occurred.

[Rel. No. IC-17609; 812-7442]

Midland Funding Corporation I ("MFC I") and Midland Funding Corporation II ("MFC II"); Notice of Application

July 20, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1990 ("Act").

APPLICANTS: Midland Funding Corporation I ("MFC I") and Midland Funding Corporation II ("MFC II").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to assist in the financing and refinancing of certain property through leveraged lease transactions in which Midland Corporation Venture Limited Partnership ("MCV") will be the lessee.

FILING DATE: The application was filed on December 1, 1989 and amended and restated on June 11, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, 1209 Orange Street, Wilmington, DE 19801.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available 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).

Applicants' Representations

1. Each applicant is a Delaware corporation all of whose shares of

common stock are owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There is, and will be, no class of equity securities issued by applicants other than common stock. Applicants have been created to participate as lenders in one or more leveraged lease transactions ("Lease Transactions") in which MCV will be the lessee.

2. Applicants' sole purpose is to assist MCV in the financing, in whole or in part, of MCV's interest in the assets that together constitute a gas-fired cogeneration facility ("Facility"). MCV was formed in 1986 to construct, own and operate the Facility. Its principal general partner is CMS Midland, Inc. ("CMS Midland"), a wholly-owned subsidiary of CMS Energy Corporation ("CMS Energy"). The Facility is currently owned by Consumers Power Company ("Consumers") and leased to MCV. Certain of the assets constituting the Facility were owned by MEC Development Corporation ("MDC"), a wholly-owned subsidiary of CMS Energy. The assets of MDC have been transferred to MCV ("MDC Asset Transfers") in exchange for certain notes issued by MCV ("MCV Notes").

3. MCV has committed to sell a portion of the annual electrical output of the Facility pursuant to power purchase agreements with Consumers (collectively, the "PPA") and steam electricity pursuant to a 25-year steam and electric power agreement with Dow Chemical Company (the "SEPA" and collectively with the PPA, the "Project Documents") for its plant. The Facility has been certified by the Federal Energy Regulatory Commission ("FERC") as a qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978. The capacity charge provided for in the PPA has not been approved at this time by the Michigan Public Service Commission (the "MPSC") for pass-through by Consumers to its customers and the outcome of ongoing proceedings relating to further approval is impossible to predict. However, applicants believe that Consumers is obligated to pay the capacity charge to MCV irrespective of the MPSC proceedings.

4. On March 16, 1990 (the "First Closing"), MCV sold undivided interests constituting, in the aggregate, 100% of the pollution control equipment and certain related assets (the "Initial Assets") to five grantor trusts (the "Initial Owner Trusts") established for the benefit of certain equity investors (the "Initial Owner Participants" or "Lessors"). The purchase was funded by the equity investments of the Initial

Owner Participants and the issuance of certain subordinated notes by the Initial Owner Trusts. Each Initial Owner Trust subsequently leased its undivided interest in the Initial Assets back to MCV pursuant to separate net operating leases with a base lease term of 25 years (the "Initial Leases").

5. As of the date of the amended application, applicants anticipated that the remaining portion of the Facility would be conveyed to the Initial Owner Trust and one additional grantor trust (collectively, the "Owner Trusts") established for the benefit of the Initial Owner Participants and additional institutional investors (collectively, the "Owner Participants"), and would become subject to several amended and restated leases (collectively, the "Leases") on or before June 15, 1990 (collectively, the "Second Closing"). By letter dated July 19, 1990, counsel for the applicants verified that the remaining portion of the Facility has been so conveyed and so leased.

6. Pursuant to the Leases and related transactions, the aggregate purchase price for the Facility (the "Purchase Price") will be its fair market value as determined by an independent appraiser at the time of purchase. CMS Energy or one of its affiliates will have purchased approximately a 35% interest in the Facility and MCV has arranged the private placement of the remaining 65% of the equity participations in the leveraged lease of the Facility. While certain assets may be retained by MCV separate from the Lease Transactions (including certain assets which will secure the Working Capital Line described in footnote 1 below), all such assets necessary to the operation of the Facility will be made available to the Owner Trusts under support facilities agreements. As security for MCV obligations under each of the Leases, MCV will pledge all of its right, title and interest in the PPA, the SEPA, certain natural gas supply and transmission agreements and certain other agreements and rights relating to the operation and maintenance of the Facility, whether then in existence or later entered into, and all revenues payable to MCV thereunder, subject to certain retained rights of MCV.

7. Applicants will assist the financing of the Facility by participating as lender to the Owner Trusts. Each Owner Trust will issue its proportionate share of approximately \$1.2 billion aggregate principal amount of non-recourse senior secured debt (collectively, the "Senior Lease Debt") and approximately \$367 million aggregate principal amount of non-recourse subordinated secured debt

(the "Subordinated Lease Debt") directly to applicants in exchange for cash and/or the MCV Notes.¹ Each Owner Trust has or will also assume obligations of certain tax-exempt bonds ("Tax-Exempt Bonds"). The applicants will not be a party to such transactions relating to the Tax-Exempt Bonds except to the extent that MFC I issues \$19 million aggregate principal amount of Senior Lease Bonds to the Tax-Exempt Bonds' issuer, secured by a like amount of Senior Lease Debt, to secure certain obligations relating to the Tax-Exempt Bonds.

8. Each Owner Trust will enter into two indentures with different indenture trustees. One indenture will provide for the issuance of one or more series of the Senior Lease Debt (the "Senior Lease Indenture") and the other for the issuance of one or more series of the Subordinated Lease Debt (the "Subordinated Lease Indenture"). All of the Senior Lease Indentures will be substantially identical to each other. All of the Subordinated Lease Indentures will be substantially identical to each other. Aside from the provisions relating to subordination and certain events of default, the Subordinated Lease Indentures also will be substantially identical to the Senior Lease Indentures. It is intended that all of the Senior Lease Debt will be issued directly by each of the Owner Trusts to MFC I, which in turn will issue one or more series of senior secured bonds of the same aggregate principal amount (the "Senior Lease Bonds") under a collateral trust indenture (the "Collateral Senior Lease Indenture") with an indenture trustee that will qualify under the Trust Indenture Act of 1939 (the "TIA"). Each series of the Senior Lease Bonds will be secured by a pledge of the Owner Trust's Senior Lease Debt of the corresponding series and will mirror in all respects (other than amount) the terms of the Owner Trusts' Senior Lease Debt. Similarly, the Subordinated Lease Debt will be issued by each of the Owner Trusts directly to MFC II, which in turn will issue one or more series of subordinated secured bonds of the same aggregated principal amount (the "Subordinated Lease Bonds") under a separate collateral trust indenture (the "Collateral Subordinated Lease

Indenture") with a second indenture trustee qualified under the TIA. Each series of the Subordinated Lease Bonds will be secured by pledge of all the Owner Trusts' Subordinated Lease Debt of the corresponding series and will similarly mirror the terms of the Owner Trusts' Subordinated Lease Debt.

9. A single corporate trustee will serve as owner trustee (the "Owner Trustee") for each of the Owner Trusts. A second corporate trustee (the "Senior Trustee") will serve as the indenture trustee under each of the Owner Trusts' Senior Lease Indentures and the applicants' Collateral Senior Lease Indenture. A third corporate trustee (the "Subordinated Trustee") will serve as indenture trustee under each of the Owner Trusts' Subordinated Lease Indentures and the applicants' Collateral Subordinated Lease Indenture (the Senior Trustee and the Subordinated Trustee are collectively referred to as the "Indenture Trustees"). In addition, a fourth corporate trustee (the "Collateral Agent") will serve as the collateral agent responsible for administering the intercreditor arrangements pursuant to a Collateral Agency and Intercreditor Agreement (the "Intercreditor Agreement"). None of these Trustees will be affiliated with any Lessor nor will any of these trustees be a trustee under any indenture of MCV, any of MCV's partners, Consumers, or CMS Energy.

10. To insure an orderly flow of funds and the proper payment to the holders of the Lease Debt, the Collateral Agent, acting on behalf of the Indenture Trustees for the Lease Debt, will collect all rental payments under the Leases and other cash flow from the Facility, including amounts paid under the PPA and SEPA, and except upon the occurrence of certain defaults, the Collateral Agent will pay operation and maintenance expenses of the Facility (including payments under the Working Capital Line), distribute debt service payments to the Indenture Trustees with respect to the Lease Debt, pay amounts owing with respect to the MCV Notes, fund or replenish certain reserves, pay the equity portion of the rental payments under the Leases to the Lessors, and distribute any excess cash flow, subject to certain limitations, to MCV. To the extent the Collateral Agent receives payment prior to the date funds are to be disbursed to the various entities under the Intercreditor Agreement, the Collateral Agent is permitted to invest such funds in certain "Permitted Investments," defined as: (a) United States Government obligations; (b) obligations, debentures, notes or

¹ Up to \$365 million aggregate principal amount of additional Subordinated Lease Debt may be issued if a capacity charge in excess of 3.77 center per kWh is authorized by the MPSC. In addition, MCV expects to have a \$50 million working capital facility (the "working Capital Line") which is currently expected to be provided by one bank and secured by a first priority perfected security interest in MCV's earned receivables and stored natural gas inventory.

other evidences of indebtedness issued or guaranteed by the Export-Import Bank of the United States or the Federal Housing Administration; (c) interest bearing time deposits (including certificates of deposit) which are either (i) completely insured by the Federal Deposit Insurance Corporation, or (ii) held in bonds having general obligations rated at least "A+" or equivalent by Moody's Investor Services or Standard and Poor's Corporation; and (d) commercial paper rated "A-1/P-1" or better (but excluding commercial paper issued by MCV, any of the partners of MCV, or any of their affiliates). The ability of the Senior Trustee and Subordinated Trustee to give directions to the Collateral Agent will be governed by the terms of the Intercreditor Agreement and their respective Collateral Senior Lease Indenture and Collateral Subordinated Lease Indenture.

11. The Subordinated Lease Debt will be junior and subordinated in right of payment to the Senior Lease Debt and, effectively, Subordinated Lease Bonds will be junior and subordinate in right of payment to the Senior Lease Bonds. The Subordinated Lease Indenture, the Collateral Subordinated Lease Indenture, and the Intercreditor Agreement will provide that no payments will be made to the Subordinated Trustee with respect to Subordinated Lease Debt or Subordinated Lease Bonds or to any Lessor if a payment default exists with respect to the Senior Lease Bonds.

12. Applicants have agreed that up to three times during the term of the Leases, but not more frequently than once each five years, MCV may direct the Owner Trusts/Lessors to refinance all or a part of the outstanding Lease Debt on terms satisfactory to MCV as long as certain provisions in the Leases are adjusted to preserve the Owner Participants' net economic return and subject to certain other conditions, including the maintenance of the relative priorities of the liens securing such Lease Debt. In addition, if MCV and the Owner Trusts propose to make significant modifications to the Facility, it is probable that applicants would be requested to finance the purchase of such modifications by the Owner Trusts. Each and every representation in the application concerning the Collateral Lease Bonds, including representations as to the relative rights thereof and the source of payments and nature of security therefor, would be true for securities issued to refinance the Collateral Lease Bonds and for the issuance of such additional bonds. Any

refinancing of the Collateral Lease Bonds or issuance of additional bonds will be conditioned on applicants' not being obligated to pay for any of the refinancing or issuing costs and any new additional bonds will be subject to the same conditions as when the original Collateral Lease Bonds were issued.

13. The participation of applicants as lenders in the Lease Transactions will be limited to making loans to the Lessors. The loans will be without recourse to the general credit of the Owner Trusts, the respective beneficiaries of the Owner Trusts, MCV, or MCV's general or limited partners, and will be evidenced by the Lease Debt. Each of the Leases will provide for rental and other payments to be made to the Lessor thereunder by MCV in amounts and at times sufficient to provide for the payment and performance of all the obligations of such Lessor under its allocable portions of Senior Lease Debt and Subordinated Lease Debt. The obligation of MCV to make such payments will be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. In addition, the Leases require that so long as no default has occurred under any Lease, the trustees of any Lease Indenture shall not take or cause to be taken any action contrary to MCV's rights under the Leases, including the right to quiet use and possession of the Facility and the site on which the Facility is located.

14. Applicants will not purchase any Lease Debt unless all such Lease Debt is issued in respect of leased property having an aggregate fair market sales value (measured at the time such leased property was first financed under the Leases) equal to at least 110 percent of the original principal amount of such Lease Debt.

15. The original beneficiary of each Owner Trust will be a single sophisticated institutional investor or a partnership. All such beneficial interests will be offered and sold in transactions not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (the "Securities Act"). Subsequent transfers of such beneficial interests by an Owner Participant (in amounts of at least \$50 million) will be made only to sophisticated investors which are one or more, but not more than four, United States corporations or partnerships each of which has a consolidated net worth at the time of such transfer of at least \$50 million. If any such transfer is made, to prevent the termination of, or other adverse effect on, the qualified facility status of the Facility or the occurrence

of other adverse regulatory effects on the Facility or the Owner Participants, the consolidated net worth of any of such transferees may be reduced to \$25 million.

16. The Lease Debt will be offered to applicants in transactions exempt from registration under the Securities Act. Applicants will receive assurances from each Lessor and each beneficiary thereof that at the time applicants acquire the Lease Debt issued by such Lessor and so long as the Lease Debt issued by such Lessor is outstanding (a) neither such Lessor nor any beneficiary thereof is or will be an investment company within the meaning of section 3(a) of the Act or (b) such Lessor and any beneficiary thereof will be deemed to be excluded from the definition of an investment company by virtue of the provisions of section 3(b) or section 3(c) of the Act.

17. Applicants will be precluded from purchasing Lease Debt except to comply with the provisions of the Collateral Lease Indentures. Each Lease Indenture will include as events of default, among others, payment defaults on the Lease Debt issued thereunder and the events of default under the related Lease (subject to its cure provisions).

18. The Collateral Lease Bonds will be issued in private placements pursuant to section 4(2) of the Securities Act. Collateral Lease Bonds may be resold in transactions exempt from registration under the Securities Act or, if an exemptive order in respect of this notice has been granted, in underwritten secondary public offerings in compliance with the Securities Act and the rules and regulations thereunder. MCV will be considered to be the issuer of the Collateral Lease Bonds for purposes of the Securities Act and the obligor for purposes of the TIA. Therefore, if any registration statement is filed under the Securities Act relating to any of the Collateral Lease Bonds, such registration statement would name MCV as the sole registrant thereof and would be signed on behalf of MCV by such of its officers and directors as may be required under the Securities Act. Accordingly, the provisions of Section 11 of the Securities Act would apply to MCV.

19. As security for the due and punctual payment of the principal of the premium (if any) and interest on each series of the Senior Lease Bonds, MFC I will assign and pledge to the Senior Trustee under the Collateral Senior Lease Indenture for such series, as security for the equal and ratable benefit of the holders from time to time of such Senior Lease Bonds, the

corresponding series of Senior Lease Debt. Similarly, as security for each series of Subordinated Lease Bonds, MFC II will assign and pledge to the Subordinated Trustee under the Collateral Subordinated Lease Indenture for such series, corresponding series of the Subordinated Lease Debt. It is intended that the Senior Trustee under the Collateral Senior Lease Indenture will also be the trustee under the Senior Lease Indenture and the Subordinated Trustee under the Collateral Subordinated Lease Indenture will be the trustee under the Subordinated Lease Indenture.

Applicants' Conditions

If the requested order is granted, applicants agree to the following conditions:

1. In the future, all outstanding shares of applicants' common stock will be owned by CTC or CT or a successor to, or assignees of, CTC or CT performing similar functions, and there will be no public offering of the common stock or any other equity security of applicants.
2. Applicants' sole purpose is and will be limited to operating as "pass-through" vehicles for the financing and refinancing of the Facility to be purchased by the Lessors.
3. The estates of each Lease Indenture securing the Lease Debt will include (a) an assignment of the Lease, the related rights and revenues derived therefrom and all collateral security therefor, including, among other things, all rights and revenues under the Project Documents and all property (other than certain miscellaneous property of immaterial value) of MCV whether then owned or later acquired, and (b) a first or second, as the case may be, priority security interest in and lien on the Lessor's undivided ownership interest in the Facility.
4. Payments of the principal of, and premium (if any) and interest on, each class and series within a class of Lease Debt issued to the applicants will be due in such amounts and at such times as will be sufficient to pay the principal of, and premium (if any) and interest on, the Lease Bonds of the corresponding class or series within the class on the scheduled payments dates therefor, including sinking fund payment dates.
5. MCV, in its capacity as lessee under each Lease, will covenant that (a) it will not, directly or indirectly, create, incur assume or permit to exist any lien or other encumbrance on or with respect to the Facility, the Lessor's title thereto, or any interest of the Lessor therein, except certain "Permitted Liens" described in section I.C.1 of the application, and (b) it will promptly at its own expense take

any such action as may be necessary duly to discharge any such lien other than Permitted Liens.

6. Applicants will not invest in, reinvest in, own, hold or trade securities other than Lease Debt and Permitted Investments.

7. At least 85% of the proceeds received by applicants from the sale of the Collateral Lease Bonds will be used to finance or refinance the undivided interests in the Facility as soon as practicable, but in no event later than six months after applicants' receipt thereof.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17614 Filed 7-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17616, International Series Release No. 132; 812-7564]

ABN AMRO Holding N.V.; Application

July 26, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: ABN AMRO Holding N.V.

RELEVANT 1940 ACT SECTION: Order requested under section 6(c).

SUMMARY OF APPLICATION: ABN AMRO seeks an order exempting it from all provisions of the Act in connection with the offer and sale of its equity and debt securities (the "Securities").

FILING DATE: The application was filed on July 24, 1990. Applicant has agreed to file an amendment to the application during the notice period, the substance of which has been agreed upon and incorporated into the notice.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders a hearing. In order to enable the Exchange Offer, as described herein, to be extended to United States investors before August 17, 1990, the usual period of time within which an interested person may request a hearing on the application has been shortened. The Commission has determined that, in view of the nature of the application and the necessity for action before August 17 so that as many United States investors can participate in the Exchange Offer as practicable, the shortened period of public notification is necessary and reasonable. 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 August 9, 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, c/o George J. Forsyth, Esq., Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, New York 10005.

FOR FURTHER INFORMATION CONTACT: Kimberly Warren, Staff Attorney, at (202) 272-3026, or Max Berueffy, Branch Chief, at (202) 272-3018 (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 is a bank licensed under the laws of The Netherlands. Currently Applicant engages in no commercial activities, with the following exception: On July 17, 1990, Applicant began an offer to exchange (the "Exchange Offer") its ordinary shares ("Ordinary Shares") for the ordinary shares and preference shares convertible into ordinary shares of Algemene Bank Nederland N.V. ("ABN") and for ordinary shares of Amsterdam-Rotterdam Bank N.V. ("Amro"). Shareholders of ABN and Amro exchanging shares for Ordinary Shares pursuant to the Exchange Offer will also receive subscription rights ("Rights") to bearer depositary receipts with limited exchangeability ("BDRs") for new preference shares ("Preference Shares") of Applicant (the "Subscription Offer"). Offers and sales pursuant to the Exchange Offer and the Subscription Offer may not be made in the United States or to United States persons, as such terms are defined in Regulation S of the Securities Act of 1933 (the "1933 Act") without an exemption from the registration requirements of the 1933 Act. Thus, Applicant intends to offer and sell privately Ordinary Shares and

BDRs on the same terms, as to share ratios and price, as in the Exchange Offer and the Subscription Offer, to as many investors in the United States who own ordinary shares or convertible preference shares of ABN or ordinary shares of Amro as Applicant determines to be legally and practically feasible (the "United States private offering"). These transactions would be made pursuant to an exemption from the registration requirements of the 1933 Act. The proposed acquisition by Applicant of the securities of ABN and Amro is subject to the prior approval of the Board of Governors of the Federal Reserve System (the "Federal Reserve Board").

2. Upon completion of the Exchange Offer, ABN and Amro will become subsidiaries of Applicant. The Managing Boards of ABN and Amro have agreed to the complete operational and legal integration of the two banks under the name ABN AMRO Bank. Until then, ABN and AMRO will each be managed by a Managing Board of identical composition to that of the Managing Board of Applicant.

3. ABN is a full service commercial bank which provides a wide range of banking services in The Netherlands, as well as banking services in the United States and worldwide. ABN's primary business consists of receiving deposits and making loans. As of May 31, 1990, it operated 709 branches in The Netherlands and had more than 283 branches in 45 foreign countries.

4. Amro is also a full service commercial bank providing a wide range of banking services in The Netherlands, as well as banking services in the United States and worldwide. Amro's primary business consists of receiving deposits and making loans. Amro currently has a network of some 760 branches in The Netherlands and operates internationally through a network of almost 100 offices, subsidiaries and affiliates.

5. ABN and Amro are two of the largest commercial banks in the world. At December 31, 1989, ABN's total consolidated assets amounted to NLG 173,182,000,000 (U.S. \$89.54 billion) and consolidated deposits amounted to NLG 92,988,000,000 (U.S. \$48.07 billion).¹ ABN's consolidated net income for the year ended December 31, 1989 amounted to NLG 701,000,000 (U.S. \$362.42 million) and consolidated shareholders' equity amounted to NLG 6,485,000,000 (U.S. \$3.35 billion). At December 31, 1989,

Amro's total consolidated assets amounted to NLG 179,720,000,000 (U.S. \$92.92 billion) and consolidated deposits amounted to NLG 89,319,000,000 (U.S. \$46.18 billion). Amro's consolidated net income for the year ended December 31, 1989 amounted to NLG 849,000,000 (U.S. \$438.93 million) and consolidated shareholders' equity amounted to NLG 6,638,000,000 (U.S. \$3.43 billion).

6. Applicant, ABN and Amro are subject to supervision by the Ministry of Finance of The Netherlands and by De Nederlandsche Bank N.V., the central bank of The Netherlands, under the authority of the revised Act on the Supervision of the Credit System (the "Supervision Act"). Applicant represents that this regulatory structure is generally equivalent to, and in certain important respects, more restrictive than, the regulation imposed on United States banks. The Supervision Act confers upon regulatory authorities in The Netherlands broad powers to exercise "prudential control" over commercial banks and other credit institutions, and their corporate structure. The regulatory authorities in The Netherlands thus impose strict tests with respect to the liquidity, solvency (capital adequacy) and loan diversification of these entities.

7. Upon consummation of the Exchange Offer, Applicant will conduct its banking operations in the United States through the ABN and Amro branches and agencies. Due to its control of United States banks and the applicability of the International Banking Act of 1978 (the "IBA"), Applicant will become subject to the provisions of the Bank Holding Company Act of 1956 (the "BHCA"). Under the BHCA, the Federal Reserve Board regulates the type of activities in which a foreign bank holding company may engage in the United States and requires the filing of detailed annual reports regarding its operations.

8. The Amro New York branch is a federally licensed branch regulated by the Comptroller of the Currency pursuant to section 4 of the IBA. ABN's branches and agencies in the United States are licensed and examined by state banking authorities under the banking laws of the states in which the branches and agencies are located, and must observe state banking regulations. Under the IBA, the branches and agencies are subject to reserve requirements and direct examinations by the Federal Reserve Board. ABN and Amro are each restricted from opening new deposit taking branches in other states outside a "home state" designated in accordance with the requirements of

the IBA. In addition, both the BHCA and the IBA place restrictions upon the ability of foreign banks to engage in interstate banking activities and limit the extent to which a foreign bank such as Applicant can conduct non-banking activities in the United States.

9. Following consummation of the Exchange Offer, Applicant may wish to raise equity capital in the United States in a public or private primary offering of equity securities either directly or in the form of American depository shares represented by American depository receipts. Applicant also may wish to issue in the United States, either directly or through subsidiaries (i) medium-term (nine month to thirty year maturities) and long-term debt securities and commercial paper, and (ii) banker's acceptances and letters of credit, in each case which may be unconditionally guaranteed as to payment of principal and interest by Applicant ("Debt Obligations," and together with Applicant's equity securities, "Securities"), for sale in the United States.

Applicant's Legal Analysis

1. Applicant may be deemed to be an investment company within the meaning of section 3(a)(3) of the Act by reason of its proposed acquisition of securities pursuant to the Exchange Offer. Because the shares of ABN and Amro which Applicant proposes to acquire are predominantly in bearer form, Applicant cannot determine how many shareholders are resident in the United States. However, it has reason to believe there may be more than 100 holders of these shares resident in the United States. The Commission staff has issued an interpretation that the private placement of securities of a foreign investment company and subsequent resales thereof pursuant to Rule 144A, which causes such securities to be beneficially owned by more than 100 United States residents may contravene section 7(d) of the Act in the absence of an exemption.

2. Applicant seeks an order of exemption from all the provisions of the Act so that it may offer and sell its Ordinary Shares and BDRs on terms similar to those of the Exchange Offer and the Subscription Offer to as many investors in the United States who own ordinary shares or convertible preference shares of ABN or ordinary shares of Amro as Applicant determines to be legally and practically feasible, and so that it may offer and sell equity and debt securities in the United States subsequent to the Exchange Offer.

¹ The rate of exchange for United States dollars and Netherlands guilders is NLG 1=U.S. \$3.517 as quoted in the "Key Currency Cross Rates," Wall St. J., Jan. 3, 1990, at C12, col. 5.

3. Applicant believes that there are significant economic benefits that would be gained by the consummation of the Exchange Offer at earliest possible date, and which would accrue to all shareholders of ABN and Amro who are entitled to participate in the Exchange Offer. If the order is not granted, the Exchange offer would be available to only 100 United States investors. United States holders who could not participate in the manner contemplated would be forced either (a) to sell their shares during the limited anticipated remaining time in which ABN or Amro shares will be listed on organized securities markets abroad or (b) to hold an investment which in all likelihood will become relatively illiquid, with consequent negative effect on value. Approval of the request for relief will assure participation by as large a number of United States investors as is practicable under the circumstances.

4. Applicant further maintains that granting the request is in the public interest because it will assure United States holders that the transferability of any shares received in such a transaction will not be contractually impaired by reason of any numerical limitation on United States holders. While there will be contractual restrictions designed to assure the availability of an exemption from the 1933 Act, the recent Commission action in adopting Regulation S under the 1933 Act, with its resale safe harbor provisions, will afford advantages to United States holders such that, in light of the anticipated primary market for Applicant's Ordinary Shares and Preference Shares being outside the United States, they will continue to have marketable investments.

5. Approval of the application is necessary and appropriate in the public interest because it would advance the United States policy objectives of equality of treatment between domestic and foreign banks in like circumstances, give Applicant access to the United States capital markets and expand investment opportunities for United States investors. Approval of the application would also be consistent with the protection of investors because the existing regulatory structure to which Applicant, ABN and Amro are subject affords sufficient protection for investors.

6. The purposes of the Act are to curb abuses frequently perpetrated by a particular type of investment vehicle. United States bank were excluded from the Act's coverage because they were already subject of an extensive regulatory structure that afforded

protection to investors and because their operations did not give rise to the abuses sought to be prevented by the Act. Applicant asserts that these two basic reasons for an exemption are equally applicable. Applicant, a Dutch bank, which will hold the shares of ABN and Amro, both commercial banks, is a different type of institution than an investment company. The two types of institutions differ in purpose, function, and role in the economy. Applicant will be primarily engaged in holding the shares of its two commercial bank subsidiaries. ABN and Amro will be engaged in commercial banking activities, not the investment company business.

Conditions to the Requested Relief

If the requested order is granted, Applicant expressly consents to the following conditions:

1. Any offers or sales of Securities in the United States will be: (a) Pursuant to a public offering registered under the 1933 Act; or (b) pursuant to an exemption from the registration requirements under the 1933 Act which is available to Applicant with respect to such offers and sales, and Applicant will not effect any such offers and sales without obtaining an opinion of United States counsel that such exemption is available to applicant; or (c) pursuant to the advice of the staff of the Commission that it would not recommend that the Commission take any action under the 1933 Act if such Securities are not registered.

2. Any offering or placement of Securities will be done on the basis of disclosure documents that are appropriate and customary for such offering or placement, whether made pursuant to a registration statement under the 1933 Act or an exemption therefrom.

3. Applicant will appoint an agent located in New York City, which may be a subsidiary of Applicant or a branch thereof, to accept service of process in any suit, action or proceeding with respect to Applicant's offer and sale of its Securities in the United States. Applicant will, in connection with any offering or placement of Securities in the United States, expressly submit itself to the jurisdiction of any state or federal court in New York City in respect of any action based on such Securities. Such appointment and consent to jurisdiction will be irrevocable as long as any of Applicant's Securities issued in reliance upon the order being sought hereby remain outstanding and are held by persons that are citizens or residents of the United States, and as long as such Securities remain outstanding, it will

appoint a successor agent for service if the agent first appointed is discharged or is unwilling or unable to continue to serve as agent for service. Applicant will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of such Securities or otherwise in connection with such Securities.

4. Upon consummation of the Exchange Offer, ABN and Amro will then constitute substantially all, but not less than 80% of Applicant's business.² Thereafter, Applicant will only issue Securities in the United States as long as ABN and Amro remain subsidiaries and constitute substantially all, but not less than 80%, of Applicant's business, or ABN AMRO Bank becomes and remains a subsidiary constituting substantially all, but not less than 80%, of Applicant's business, and so long as ABN Amro remain commercial banks and are subject to regulation as such under applicable Dutch banking legislation, or ABN AMRO Bank becomes and remains a commercial bank and is subject to regulation as such under Dutch banking legislation. Further, ABN and Amro, or ABN AMRO Bank, will have a presence in the United States that substantial and which subjects Applicant's and ABN's and Amro's, or ABN AMRO Bank's, operations to regulation by United States federal or state banking authorities. Applicant represents that it has no intention of causing ABN and Amro, or ABN AMRO Bank, to discontinue banking operations in either The Netherlands or the United States, except, as to ABN and Amro, as the same shall be conducted by ABN AMRO Bank, so that they would cease to be regulated as banks in The Netherlands and the United States. If, however, such operations are curtailed with the result that Applicant is no longer regulated as a bank holding company in the United States, Applicant agrees that it will continue to comply with its undertakings concerning Applicant's appointment of an agent in New York City and Applicant's submission to jurisdiction, as set forth in this application, until such time as there shall be no holders in the United States of Applicant's Securities issued in reliance upon any order made by the Commission pursuant to this application.

5. Following consummation of the Exchange Offer, Applicant will comply with any applicable filing or reporting

² This condition was agreed to in a supplemental letter from Applicant's counsel received on July 28, 1990, and will be filed as an amendment to the application during the notice period.

requirements of Rule 6c-9 under the Act, as amended subsequent to the date of this Application.

Applicant further agrees that in any such offer or sale of Debt Obligations:

1. Such Debt Obligations will rank *pari passu* with other debt securities of the Applicant having the same degree of subordination and would rank senior to the Applicant's Ordinary Shares.

2. Any commercial paper sold by Applicant in the United States in reliance upon the order sought hereby would be unsecured prime quality commercial paper notes (the "Notes") in denominations of at least \$25,000. The Notes would rank *pari passu* among themselves, senior to Applicant's Ordinary Shares and equally with other unsecured obligations of Applicant, except subordinated debt of Applicant that would rank below the Notes. The Notes would be issued and sold by Applicant, directly or to or through one or more United States commercial paper dealers in the United States, without advertisement or offer for sale to the general public. Applicant undertakes that each such dealer would undertake to provide each offeree of Notes with a memorandum at least as comprehensive as those customarily prepared in connection with offers and sales in the United States or prime grade commercial paper or foreign issuers.

3. The terms of the Notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and the manner of offering them to investors would be such as to qualify them for the exemption from registration under the 1933 Act as provided by section 3(a)(3) or section 4(2) of the 1933 Act or by any other applicable exemption from registration under the 1933 Act.

4. Notes offered so as to qualify under the exemption provided by section 3(a)(3) of the 1933 Act ("section 3(a)(3) Paper") would be prime quality, negotiable commercial paper of a type eligible for discount by Federal Reserve Banks and would arise out of, or the proceeds of which would be used for, current transactions. The Applicant's section 3(a)(3) Paper would contain no provision for payment on demand, extension, renewal or automatic rollover at the option of either Applicant or the holder. Applicant may appoint a bank or other financial institution in the United States as its authorized agent to issue its Notes from time to time.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17823 Filed 7-28-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC -17617; International Series Rel. No. 133; 812-7305]

Western Australian Treasury Corporation; Notice of Application

July 26, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANT: Western Australian Treasury Corporation.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicant, a public authority established by the State of Western Australia, Commonwealth of Australia, seeks an order exempting it from all provisions of the 1940 Act in connection with the offer and sale of its debt securities in the United States.

FILING DATES: The application was filed on April 21, 1989, and amendments to the application were filed on November 7, 1989, and March 27, 1990. The Applicant has undertaken to file another amendment to its application during the notice period amending the conditions by adding a new condition substantially in the form set forth in the notice as condition five.

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 August 13, 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, c/o Jeffrey F. Browne, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's

Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a statutory authority of the State of Western Australia ("Western Australia"), Commonwealth of Australia. It was established by the Western Australian Treasury Corporation Act 1986 (the "Act") principally to borrow in both the Australian and international capital markets and lend to certain public authorities, including semi-governmental and local authorities in Western Australia, and any other entity authorized by Act of Parliament of Western Australia to borrow from the Applicant ("Participating Authorities").

2. Substantially all of the Applicant's assets consist of obligations of the Participating Authorities to repay loans made to them by the Applicant and investments to facilitate its cash flow management and to maximize return on its surplus funds. These obligations could be deemed to be "investment securities" within the meaning of section 3(a)(3) of the 1940 Act and, as a result, the Applicant may be deemed to be an investment company under the 1940 Act.

3. Substantially all of the proceeds of borrowings made by the Applicant are promptly re-lent by the Applicant to the Participating Authorities. No equity in the Applicant has been sold, and there is neither a provision in the Act permitting the sale of equity in the Applicant nor a present intention to amend the Act to permit the sale of equity in the Applicant. The Applicant is an integral part of the Western Australian Government's administration of the finances of Western Australia, and the members of its staff are officers of the Treasury Department of Western Australia.

4. The Applicant is required under the Act to comply with the provisions of the Financial Administration and Audit Act 1985 regulating the financial administration, audit and reporting of statutory authorities. The Applicant is required to prepare and submit financial statements and a report of its operations to the Treasurer of Western Australia annually in the manner and form prescribed by the Financial Administration and Audit Act 1985. The financial statements are audited by the Auditor-General of Western Australia.

5. The Applicant proposes, from time to time, to offer and sell unsecured debt securities of varying maturities in the United States ("Debt securities"),

initially in the form of short-term commercial paper.

6. The payment of principal of, and any interest or premium on, all Debt Securities issued by the Applicant in accordance with the Act will be unconditionally guaranteed by the Treasurer of Western Australia (the "Treasurer") on behalf of Western Australia pursuant to section 13(1) of the Act. There is no requirement that legal proceedings be commenced against the Applicant prior to making a demand against or, if necessary, taking proceedings against Western Australia in respect of section 13(1) of the Act. Section 13(2) of the Act provides, in effect, that any sums required by the Treasurer in fulfilling any liability arising under the guarantee by or on behalf of Western Australia shall be paid out of the Consolidated Revenue Fund of Western Australia (which is appropriated accordingly). Proceedings may be brought against Western Australia for enforcement of section 13(1) of the Act but no execution, attachment, or similar process may be issued against Western Australia.

7. Under the Act, there is no distinction between foreign and domestic borrowings with respect to the operation of the statutory guarantee of Western Australia. Section 10(2)(b)(i) of the Act authorizes the Applicant to enter into borrowing arrangements inside and outside of Australia. Domestic and overseas borrowings are guaranteed on exactly the same basis.

8. The Applicant complies with the arrangements which govern borrowings by the Commonwealth of Australia and the Australian States. Pursuant to these arrangements, Western Australia, in common with the other Australian States, is not permitted to issue its own long-term debt instruments without the approval of the Australian Loan Council, although it may guarantee the debt of its authorities, such as the Applicant.

Applicant's Legal Analysis

1. The Applicant believes that granting the exemption would be necessary or appropriate in the public interest. It would expand the United States market for the Applicant's securities and thus further the policy of the United States to encourage the free flow of capital among nations.

2. The Applicant further believes that the issuance of an order under section 6(c) would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Debt Securities issued by the Applicant would be guaranteed by the Treasurer on behalf of Western Australia and

investors in the Debt Securities would rely on the credit strength of Western Australia rather than on that of the Applicant. The Applicant is a governmental central borrowing authority with characteristics different from the types of investment companies at which the 1940 Act was generally directed and for which its substantive provisions are necessary or suitable.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. No debt Securities will be offered or sold unless (a) they are registered under the Securities Act of 1933 (the "1933 Act") or (b) in the opinion of United States counsel for the Applicant an exemption from registration under the 1933 Act is available with respect to such offer and sale.

2. All borrowings by the Applicant, including the issuance of Debt Securities by the Applicant, will be effected in accordance with the provisions of the Act. All investments of the Applicant's funds will be made by the Applicant in accordance with the requirements of the Act. All "temporary" investments by the Applicant will be made in accordance with the requirements of the Act.

3. The payment of principal of, and any interest or premium on, all Debt Securities issued by the Applicant in accordance with the Act will be unconditionally guaranteed by the Treasurer on behalf of Western Australia pursuant to section 13(1) of the Act.

4. In connection with any offering by the Applicant of its Debt Securities in the United States, the Applicant and the Treasurer, on behalf of Western Australia, will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to such Debt Securities instituted in any state or federal court in the City or State of New York. The Applicant and the Treasurer, on behalf of Western Australia, will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of such Debt Securities have been paid. The Applicant will agree to explicitly waive any immunity it may have from jurisdiction and from execution or attachment or any process in the nature thereof in respect of any such action. The Treasurer, on behalf of Western Australia, will agree to explicitly waive any immunity Western

Australia may have from jurisdiction in respect of any such action.

5. In addition, in respect of any suit, action or proceeding brought with respect to such Debt Securities instituted in any state or federal court in the United States (other than any suit, action or proceeding referred to in the preceding condition), each of the Applicant and the Treasurer, on behalf of Western Australia, will agree to accept service of process by any form of mail requiring a signed receipt effected in accordance with sections 1608(b)(3)(B) and 1608(a)(3), respectively, of the Foreign Sovereign Immunities Act of 1976 (28 U.S.C. 1608). In agreeing to accept such service of process in any such suit, action or proceeding, neither the Applicant nor the Treasurer, on behalf of Western Australia, will waive any claim of sovereign immunity it may have in respect of any such suit, action or proceeding, consent to the subject matter jurisdiction or jurisdiction *in personam* of any such court, agree that any such court is a proper forum for any such suit, action or proceeding or waive any rights it may have to remove any such suit, action or proceeding from state court to federal court.

By the Commission,
Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17824 Filed 7-26-90; 4:10 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Turbine Engine Rotor Blade Containment/Durability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of advisory circular (AC) No. 33-5.

SUMMARY: This notice announces the issuance and availability of AC No. 33-5, Turbine Engine Rotor Blade Containment/Durability. The AC provides guidance material for an acceptable means, but not the only means, of demonstrating compliance with the Federal Aviation Regulations pertaining to the containment of broken or detached rotor blades in turbine engines.

FOR FURTHER INFORMATION CONTACT: Robert J. Koenig, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington,

Massachusetts 01803; telephone (617) 273-7075.

SUPPLEMENTARY INFORMATION: Advisory Circular No. 33-5 provides guidance, to applicants for turbine engine type certification, for showing compliance with the rotor blade containment requirements of 14 CFR 33.19, Durability, and 14 CFR 33.94, Blade Containment and Rotor Unbalance Tests. It updates and supersedes the rotor blade containment provisions of AC No. 33-1B, Turbine Engine Foreign Object Ingestion and Rotor Blade Containment Type Certification Procedures. Like all advisory circular material, AC 33-5 provides information and does not constitute a regulation.

Interested parties were given the opportunity to review and comment on the draft AC during the development phase. The notice to announce the availability of, and request comments on, the draft AC was published in the *Federal Register* (51 FR 12756) on April 15, 1986. All comments were reviewed and appropriate comments were incorporated in the AC.

AC No. 33-5 was issued by the Engine and Propeller Directorate in Burlington, Massachusetts, on June 18, 1990.

A copy of AC No. 33-5 may be obtained by writing to the United States Department of Transportation, Subsequent Distribution Section, M-494.3, 400 Seventh Street SW., Washington, DC 20590.

Issued in Burlington, Massachusetts, on June 18, 1990.

Jack A. Sain,

Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 90-17640 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

[AC No. 120-40B]

Proposed Advisory Circular on Airplane Simulator Qualification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed advisory circular (AC) for Airplane Simulator Qualification.

SUMMARY: The proposed AC is intended to provide updated information regarding simulator evaluation criteria and procedures. Some validation tests have been modified and test requirements clarified. The format has been completely revised for ease of reference, and the designation of simulators has been changed from visual and Phase I through Phase III to Levels A through D to be consistent with other recent guidance material and current

regulatory projects. It cancels and replaces AC-120-40A, Airplane Simulator and Visual System Evaluation.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 120-40B.

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

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, National Simulator Program (Attention: ASO-205), P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT:

Ron Padgett, ASO-205, at the above address; telephone: (404) 763-7773 (8 a.m. to 4:30 p.m. EDT).

SUPPLEMENTARY INFORMATION: The guidance material contained in this AC reflects information to assist all operators in the qualification of airplane simulators to be used in training programs or for airman checking under title 14 Code of Federal Regulations.

Issued in Washington, DC, on June 29, 1990.

Daniel C. Beaudette,

Director, Flight Standards Service.

[FR Doc. 90-17645 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

System Capacity Advisory Committee; Establishment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of System Capacity Advisory Committee Establishment.

SUMMARY: Notice is hereby given of the establishment of the System Capacity Advisory Committee. The Director of System Capacity and Requirements is the sponsor of the Committee, which will consist of members designated by the Administrator as representatives of a broad perspective of the aviation community, environmental interests, and state and local interests. The Committee will provide advice and recommendations on the needs, objectives, plans, approaches, contents, and accomplishments of the system capacity program. The committee will review aviation system capacity needs involving airports, terminal and enroute airspace, technology, and automation. The functions of the Committee are solely advisory.

The Secretary of Transportation has determined that the information and use of the Committee are necessary in the public interest in connection with the performance of duties imposed on FAA

by law. Meetings of the Committee will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: The Office of System Capacity and Requirements (ASC), 800 Independence Avenue SW., Washington, DC 20591; telephone 202-267-3784.

Issued in Washington, DC, on July 23, 1990.

Edward T. Harris,

Director of System Capacity and Requirements.

[FR Doc. 90-17641 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

Intent To Prepare Environmental Impact Statement and To Conduct Scoping by Letter for Airport Expansion at General Mitchell International Airport, Milwaukee, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to conduct public scoping by letter.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to extend Runway 1L/19R at General Mitchell International Airport. To ensure that all significant issues related to the proposed action are identified, the FAA will conduct public scoping by letter.

FOR FURTHER INFORMATION CONTACT: Glen Orcutt, Airport Planner, Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Minneapolis, Minnesota 55450. Telephone Number (612) 725-4221.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with Milwaukee County will prepare an EIS for development at General Mitchell International Airport. The development involves the extension of Runway 1L/19R, a distance of 2000 feet, along with the extension of the parallel taxiways to the south, crossing East College Avenue on a tunnel structure to be constructed, the relocation of the runway approach light system, other visual and instrument landing aids, runway safety area and airport properties south of East College Avenue.

Comments and suggestions are invited from Federal, State, local agencies, and other interested parties to ensure the full range of issues related to this proposed project are addressed and all significant issues identified. Copies of material to be evaluated can be obtained by

contacting the FAA informational contact listed above. Comments and suggestions may be mailed to the same address.

Public Scoping

In order to facilitate public input, Scoping letters, along with information on possible alternatives will be sent to Federal, State and local agencies, and other interested parties. Written comments should be sent to the FAA contact person listed above and mailed to the same address by August 31, 1990. Information about the scoping letter may be obtained by contacting the FAA.

Issued in Minneapolis, Minnesota, on July 11, 1990.

Franklin D. Benson,

Manager, Minneapolis Airports District Office.

[FR Doc. 90-17639 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-90-32]

Petitions for Exemption; Receipt and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 20, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket

and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 24, 1990.
Deborah E. Swank,
Acting Manager, Program Management Staff,
Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 18324.

Petitioner: American Airlines Maintenance & Engineering Center.
Sections of the FAR Affected: 14 CFR 43.3 and 121.709(b)(3).

Description of Relief Sought: To extend Exemption No. 2678F that allows petitioner's certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbooks in reference to that function. Exemption No. 2678F will expire on November 30, 1990.

Docket No.: 21789.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 61.49.

Description of Relief Sought: To extend Exemption No. 3474, as amended, that allows the airman employees of petitioner's member airlines and similarly situated part 121 certificate holders to take a written or flight test without waiting 30 days provided that a part 121 authorized instructor has given the applicant additional flight or ground instruction, as appropriate, and finds that applicant competent to pass the test. Exemption No. 3474, as amended, will expire on November 14, 1990.

Docket No.: 25030.

Petitioner: Pan Am Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123 and 93.129.

Description of Relief Sought: To extend Exemption No. 4777D that allows petitioner to conduct 10 operations during 4 of the 5 high-density hours at JFK International Airport. Exemption No. 4777D will expire on October 28, 1990.

Docket No.: 25588.

Petitioner: The Soaring Society of America, Inc.

Sections of the FAR Affected: 14 CFR 45.11 (a) and (d) and 45.29(h).

Description of Relief Sought: To extend Exemption No. 4988 that allows

owners, operators, and manufacturers of gliders to forego the requirement to secure an identification plate or display the model and serial number on the exterior of the aircraft at specified locations. Exemption No. 4988 will expire on October 31, 1990.

Docket No.: 26215.

Petitioner: Hemet-Ryan Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.13(a)(1).

Description of Relief Sought: To allow petitioner to be eligible for an air taxi/commercial operating certificate and operations specifications even though the President and General Manager is not a U.S. citizen.

Docket No.: 26217.

Petitioner: Purdue University
Department of Aviation Technology.
Sections of the FAR Affected: 14 CFR 61.151(a) and 61.155.

Description of Relief Sought: To allow petitioner's flight students 21 years of age or older and with a minimum of 250 hours total flight time to take the FAA Airline Transport Pilot (part 121 or 135) or Dispatcher written test, foregoing the 23 years old/1500 flight hours required by the regulations.

Docket No.: 26218.

Petitioner: USAir, Inc.
Sections of the FAR Affected: 14 CFR 121.579.

Description of Relief Sought: To allow petitioner to engage autopilot during takeoff climb at 100 feet on its Fokker-100 aircraft.

Dispositions of Petitions

Docket No.: 25677.

Petitioner: Servicio Aereo Leo Lopez, S.A. de C.V.
Sections of the FAR Affected: 14 CFR 61.77(a).

Description of Relief Sought/Disposition: To extend Exemption No. 4978 that allows pilots employed by petitioner to be issued special purpose pilot certificates to operate a Metroliner II, model SA226TC, even though that airplane does not have a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds.
Grant, July 17, 1990, Exemption No. 4978A.

Docket No.: 25966.

Petitioner: Greater Pittsburgh International Airport, Allegheny County, Pittsburgh, Pennsylvania.
Regulations Affected: 14 CFR 107.14.

Description of Relief Sought/Disposition: To allow a 1-year delay in installing an automated access system at the Greater Pittsburgh

International Airport. *Denial, July 17, 1990, Exemption No. 5206.*

Docket No.: 26031.

Petitioner: Rocky Mountain Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 43.3(a) and (g).

Description of Relief Sought/

Disposition: To allow properly trained personnel employed by petitioner to exchange medical oxygen cylinders after such cylinders have been depleted. The exemption would cover only those occurrences when a rated mechanic is not immediately available as a standard operating practice.

Denial, July 16, 1990, Exemption No. 5207.

Docket No.: 26130.

Petitioner: Evergreen Helicopters, Inc.

Sections of the FAR Affected: 14 CFR

135.1(b)(6) and 135.387 and part 135, appendix A, paragraphs 20 and 31; and the Casa 212 (CA212) Airplane Flight Manual.

Description of Relief Sought/

Disposition: To allow petitioner to operate its CA212 airplanes without complying with: (1) Section 135.387 that requires landings to be made within 70 percent of the available runway length; (2) part 135, appendix A, paragraph 20 and the CA212 Airplane Flight Manual, which state that the maximum airport elevation for takeoff and landing operations is 8,000 feet; (3) Section 135.1(b)(6), which restricts intentional parachute jumps to within 25 statute miles of the departure airport; (4) part 135, appendix A, paragraph 31, which restricts carrying passengers and cargo on the same airplane unless a 9g (nine times the force of gravity) safety restraint device is installed; (5) part 135, appendix A, paragraph 31, which also requires compliance with § 23.787(b), which provides that there must be a means to prevent the contents of any cargo compartment, i.e., fuel bladders, from becoming a hazard. *Denial, July 18, 1990, Exemption No. 5208.*

Docket No.: 26188.

Petitioner: Advanced Aviation Training, Inc.

Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); and 121.407(a)(1); part 61, appendix A, and part 121, appendix H.

Description of Relief Sought/

Disposition: To allow petitioner's students who are applicants for a B-727, B-737, or DC-9 type rating to be added to any grade of pilot certificate to complete a portion of the practical

test in an airplane simulator. *Grant, July 6, 1990, Exemption No. 5205.*

[FR Doc. 90-17643 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 147—Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems (TCAS) Airborne Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94-463, 5 U.S.C. appendix I), notice is hereby given for the Special Committee 147—Minimum Operational Performance Standards for TCAS Airborne Equipment Meeting to be held August 14-15 in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) review of meeting agenda; (3) approval of minutes of the thirty-second meeting held on May 7-10; (4) TCAS Program status reports: (a) manufacturers update, (b) FAA TCAS Program, (c) TCAS Transition Program, and (d) TCAS III; (5) reports of working group activities: (a) Pilot Working Group and (b) Requirements Working Group; (6) review of EUROCAE Working Group 34 activities; (7) review of Mode S issues: (a) status of RTCA letter on codes and (b) review of change 3 to RTCA/DO-181; (8) update on action items from previous meeting; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC 20005; (202) 682-0268. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 19.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-17642 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

Meetings; Aeronautics Radio Technical Commission

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice of Aviation Security Advisory Subcommittee meeting.

SUMMARY: Notice is hereby given of a meeting of the Equipment and Technology Subcommittee of the Aviation Security Advisory Committee.

DATES: The meeting will be held August 13, 1990, from 1 p.m. to 5 p.m.

ADDRESSES: The meeting will be held in Conference Room 5A/B/C, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-7107.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Equipment and Technology Subcommittee of the Aviation Security Advisory Committee to be held August 13, 1990, in the Conference Room 5A/B/C, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

The Equipment and Technology Subcommittee is chaired by the FAA. The agenda for the meeting is (1) general charter discussion; (2) security technology status review; (3) development of security design criteria for new airport facilities program requirements.

Attendance at the August 13 meeting is open to the public, but limited to space available. Persons wishing to present statements or information should contact the Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-7107.

Interested parties who wish to suggest additional agenda items, or make suggestions as to working group topics, should submit them in writing to the Subcommittee Chairperson no later than August 9, 1990:

Engineering, Research and Development Service, Attn: ACD-2, DOT/FAA Technical Center, Atlantic City International Airport, Atlantic City, New Jersey 08405, telephone 609-484-6085.

Issued in Washington, DC, on July 23, 1990.

Monte R. Belger,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 90-17644 Filed 7-27-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY**Public Information Collection Requirements Submitted to OMB for Review**

Date: July 24, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Departmental Offices*OMB Number:* 1505-0105*Form Number:* None*Type of Service:* Extension

Title: Amendment to the Bank Secrecy Act Instituting an Administrative Ruling System

Description: All financial institutions subject to the reporting and recordkeeping requirements of the Bank Secrecy Act and its regulations may require interpretations of the Act and the regulations. The ruling system will provide a method by which those interpretations will be available to all financial institutions subject to the Act and regulations

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 600

Estimated Burden Hours Per Response: 45 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 450 hours

Clearance Officer: Dale A. Morgan, (202) 566-2693, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-17667 Filed 7-27-90; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 24, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of the Public Debt*OMB Number:* 1535-0053*Form Number:* PD 1014*Type of Review:* Extension

Title: Certification of Incumbency of Corporate or Organizational Officers

Description: The form lessens paperwork otherwise necessary to establish the incumbency of an officer of a corporation or organization. Without the evidence, an unauthorized officer could act for his company or organization. Small businesses would only employ the use of this form if incorporated.

Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations

Estimated Number of Respondents: 1,600

Estimated Burden Hours Per Response: 6 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 160 hours

Clearance Officer: Rita DeNagy, (202) 447-1640, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street SW., Washington, DC 20239-0001

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-17668 Filed 7-27-90; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 24, 1990.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC. 20220.

Internal Revenue Service*OMB Number:* 1545-0059*Form Number:* 4137*Type of Review:* Revision

Title: Social Security Tax on Unreported Tip Income

Description: Section 3102 requires an employee who receives tips subject to FICA tax to compete tax due on these tips if the employee did not report them to his or her employer. The data is used to help verify that the FICA tax on tip income is correctly computed.

Respondents: Individuals or households

Estimated Number of Respondents: 76,000

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping—26 minutes

Learning about the law or the form—5 minutes

Preparing the form—11 minutes

Copying, assembling, and sending the form to IRS—17 minutes

Frequency of Response: Annually

Estimated Total Recordkeeping/Reporting Burden: 74,480 hours

OMB Number: 1545-0099

Form Number: Form 1065 and Schedules D and K-1 (Form 1065)

Type of Review: Revision

Title: U.S. Partnership Return of Income; Capital Gains and Losses; and Partner's Share of Income, Credits, Deductions, etc.

Description: Internal Revenue Code section 6031 requires partnerships to file returns that show gross income items, allowable deductions, partner's names, addresses, and distribution shares, and other information. This information is used to verify correct reporting of partnership items and for general statistics

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 2,000,000

Estimated Burden of Hours Per Response/Recordkeeping:

	Form 1065	Sched. D	Sched. K-1
Recordkeeping	57 hrs., 24 min.....	5 hrs., 1 min.....	27 hrs., 44 min.
Learning about the law or the form.....	27 hrs., 35 min.....	2 hrs., 12 min.....	10 hrs., 23 min.
Preparing the form.....	52 hrs., 59 min.....	5 hrs., 10 min.....	25 hrs., 16 min.
Copying, assembling, and sending the form to IRs.....	6 hrs., 42 min.....	48 min	4 hrs., 1 min.

Frequency of Response: Annually
Estimated Recordkeeping/Reporting Burden: 1,437,105,084 hours
OMB Number: 1545-1010
Form Number: 1120-RIC
Type of Review: Revision
Title: U.S. Income Tax Return for Regulated Investment Companies
Description: Form 1120-RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120-RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 2,323
Estimated Burden Hours Per Response/Recordkeeping:
 Recordkeeping—52 hours, 22 minutes
 Learning about the law or the form—15 hours, 17 minutes
 Preparing the form—29 hours, 51 minutes
 Copying, assembling, and sending the form to IRS—3 hours, 45 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 235,227 hours
Clearing Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503
 Lois K. Holland,
Departmental Reports Management Officer.
 [FR Doc. 90-17669 Filed 7-27-90; 8:45 am]
 BILLING CODE 4830-01-M

Office of Thrift Supervision

Appointment of Conservator; Charter Savings Bank, F.S.B.

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 Charter Savings Bank, F.S.B., Hattiesburg, Mississippi on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17626 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

Commonwealth Federal Savings Association; 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 Commonwealth Federal Savings Association, New Orleans, Louisiana, on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17627 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

Mainstay Federal Savings, 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, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Mainstay Federal Savings, F.S.B., Red Bank, New Jersey, on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17628 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

Charter Bank, a Federal Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (A) and (B) 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 Charter Bank, a Federal Savings Bank, Hattiesburg Mississippi ("Association"), on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17630 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

Commonwealth Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) 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 Commonwealth Savings Association, New Orleans, Louisiana, Docket No. 4228, on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17629 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

Mainstay Federal Savings Bank, SLA; 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 Mainstay Federal Savings Bank, SLA, Red Bank, New Jersey, on July 20, 1990.

Dated: July 24, 1990.
 By the Office of Thrift Supervision.
 Nadine Y. Washington,
Executive Secretary.
 [FR Doc. 90-17631 Filed 7-27-90; 8:45 am]
 BILLING CODE 6720-01-M

United Federal Savings and Loan Association; 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 United Federal Savings and Loan Association, Vidalia, Louisiana ("Association"), on July 20, 1990.

Dated: July 24, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-17632 Filed 7-27-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 146

Monday, July 30, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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 4:28 p.m. on Tuesday, July 24, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Recommendations concerning administrative enforcement proceedings.

Matters relating to the probable failure of certain insured banks.

Matters concerning certain failed depository institutions.

Matters relating to the Corporation's assistance agreement with a depository institution.

Personnel matters.

Recommendation regarding authorization to engage the services of an investment adviser.

Delegation of authority to certain Corporation employees to enter into a settlement agreement.

Matters concerning deposit insurance assessments and related delegation of authority.

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), Vice Chairperson Andrew C. Hove, Jr., 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)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW, Washington, DC.

Dated: July 26, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-17801 Filed 7-26-90; 2:34 pm]

BILLING CODE 6714-01-M

RESOLUTION TRUST 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 3:55 p.m. on Tuesday, July 24, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions; (2) request for a waiver of section 1605.19 of the Corporation's rules and regulations, entitled "Employees Responsibilities and Conduct"; (3) the leasing of office space for the Southwest Regional and Metroplex Consolidated Office Site at Dallas, Texas; (4) delegation of authority

to make expenditures under contracts related to the management, servicing, and disposition of assets, and to establish a reporting cycle to the Board; and (5) a memorandum of understanding with the U.S. Fish and Wildlife Service about environmentally-sensitive properties.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), and concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr., and Director Robert L. Clarke (Comptroller of the Currency), 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 Federal Deposit Insurance Corporation Building located at 550-17th Street, NW, Washington, D.C.

Dated: July 25, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90-17745 Filed 7-26-90; 10:24 am]

BILLING CODE 6714-01-M

Corrections

Federal Register

Vol. 55, No. 146

Monday, July 30, 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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 321]

Food Stamp Program; Employment and Training Requirements; Nondiscretionary Provisions From the Hunger Prevention Act of 1988

Correction

In proposed rule document 90-14467 beginning on page 25611, in the issue of Friday, June 22, 1990, make the following correction:

On page 25612, in the second column, in the 35th line, "(daily ed. August 11, 1989)." should read "(daily ed. August 11, 1988)."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Indian Health Service; Correction; Statement of Organization, Functions and Delegations of Authority

Correction

In notice document 90-15688 beginning on page 27900, in the issue of Friday, July 6, 1990, make the following correction:

On the same page, in the third column, in the eighth line, the organizational code should read "(HGFKD);".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-10-4212-13; AZA-24408]

Realty Action; Exchange of Public Lands, Maricopa County, AZ

Correction

In notice document 90-8489 beginning on page 13852 in the issue of Thursday, April 12, 1990, make the following corrections:

1. On page 13852 in the third column under the heading "Gila and Salt River Meridian, Arizona", the section 18 land description should read "E $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ ". Also, the third line should read "Comprising 160 acres more or less."

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

RIN 1212-AA53

Payment of Premiums

Correction

In rule document 89-15866 beginning on page 28944 in the issue of Monday, July 10, 1989 make the following correction:

§ 2610.8 [Corrected]

On page 28953, in the third column, in § 2610.8(a)(1), in the table, in the second column, the last entry now reading "1000" should read "100".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17577; 811-4565]

Olympus Money Market Fund; Application

Correction

In notice document 90-16531 beginning on page 28975 in the issue of Monday,

July 16, 1990, make the following correction:

On page 28976, in the first column, at the end of the document, in the file line, the "FR Doc." number should read "90-16531".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-21]

Rules of Practice for FAA Civil Penalty Actions

Correction

In rule document 90-15332 beginning on page 27548 in the issue of Tuesday, July 3, 1990, make the following correction:

On page 27574, in the third column, in the section heading the section number should read "13.16".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-194-AD; Amdt. 39-6653]

Airworthiness Directives; Boeing Model 747 Series Airplanes

Correction

In rule document 90-16256 beginning on page 28600, in the issue of Thursday, July 12, 1990, make the following correction:

§ 39.13 [Corrected]

On page 28602, in the first column, in § 39.13, under *Boeing*, in paragraph A.1., in the fourth line, "(BS) 100" should read "(BS) 1000".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 90-NM-115-AD; Amdt. 39-6662]

**Airworthiness Directives; Lockheed
Model L-1011 Series Airplanes***Correction*

In rule document 90-16672 beginning on page 29009 in the issue of Tuesday, July 17, 1990, make the following correction:

§ 39.13 [Corrected]

On page 29010, in § 39.13, in the third column, in the seventh full paragraph on the first line the word "not" should be deleted.

BILLING CODE 1505-01-D

Register **Environmental Protection Agency**

Monday
July 30, 1990

Part II

Environmental Protection Agency

Policy on Electronic Reporting; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3815-4]

Policy on Electronic Reporting

A. Purpose

This policy establishes a uniform Agency approach to electronic reporting by the regulated community, that is, to their submission of reports in an electronic or magnetic medium. This policy is intended to promote the adoption of electronic reporting by EPA programs, and to ensure that as they implement this technology they do so in a manner that is both consistent across the Agency and compatible with the electronic reporting practices that are current in the regulated community.

B. Applicability

This policy applies in every case where EPA programs are requesting or requiring reports from members of the regulated community, including those cases where reports are required or requested of Federal facilities. This policy applies whether the recipients of the reports are EPA programs at headquarters or in regional offices, or State or local government agencies.

However, this policy is not intended to disrupt existing systems of electronic reporting; therefore, this policy does not apply to systems in place before its effective date, or to any subsequent enhancements of such systems. In addition, this policy does not apply to transfers of data or information that are internal to EPA itself.

C. Force of This Policy

1. For EPA Programs

This policy is intended as guidance to EPA programs, that they will follow to the extent practicable. Program offices initiating nonconforming systems should be aware that the National Institute of Standards and Technology (NIST) has proposed a Federal Information Processing Standard (FIPS) for electronic data interchange (EDI). 54 FR 38424 (September 18, 1989). If promulgated, this FIPS would require all agencies procuring or upgrading EDI systems after the effective date to use either the ANSI X12 or UN/EDIFACT standards, and it is these standards that are adopted in this policy as well.

2. For the Regulated Community

This policy is intended to inform the regulated community of the general approach that EPA will take to electronic reporting. As individual programs adopt electronic reporting within the framework of this approach,

they will specify the obligations of their respondents to comply with the standards and procedures they develop.

3. For States and Local Governments

This policy is intended to inform State and local governments of the general approach that EPA will take to electronic reporting. However, this policy recognizes that as the Agency institutes electronic reporting for specific State-delegated programs, acceptable approaches will require consultation and collaboration with the affected organizations, as well as accommodation of their needs, capabilities and available resources.

D. Background

For the purposes of this policy statement, electronic reporting includes any case of transferring data (or information) using an electronic or magnetic medium. Electronic media include telecommunications transmissions as well as direct computer-to-computer links; magnetic media include disks, diskettes and tapes. In both business and government, electronic reporting is rapidly becoming the preferred mode for transferring data: compared to paper, it greatly increases the speed at which the transferred data can be processed, if only because it eliminates the need to rekey the data into a recipient's database. By eliminating this rekeying—and by eliminating the need to produce and physically transfer paper—electronic reporting usually reduces the cost and improves the accuracy of the data transfer as well.

Some of the most familiar cases of electronic reporting deal with financial data: in the world of business, the electronic transfer of funds that we now take for granted, and, in government, the increasingly prevalent electronic filing of tax returns. We may also find examples of electronic reporting at EPA: the electronic transmission of laboratory measurement results, codified in EPA Order 2180.2, and the magnetic submission of Form R Toxic Release Inventory data, provided for in the EPA guidance document, "Toxic Chemical Release Inventory Magnetic Media Submission Instructions". Nonetheless, the dominant force in electronic reporting lies elsewhere—in the realm of what is commonly known as "electronic data interchange" or "EDI".

Historically, EDI arose from efforts in certain industries to standardize the formats and procedures for the electronic transmission of such routine business documents as purchase orders and invoices. The goal was to create common definitions for these electronic

transactions that would allow participants to avoid the unacceptable costs of making and maintaining unique arrangements with each of their trading partners. As industry participation has broadened, the EDI standard setting process—at least in this country—has come to reside in the American National Standards Institute (ANSI), a nongovernmental body founded in 1918 to coordinate America's voluntary standards system. In 1979, ANSI established the X12 committee to oversee the development of standards for the electronic exchange of business information. The resulting EDI standards are known generally as the "ANSI X12" standards. There is a similar, though discrete, standard setting effort for international transactions, sponsored by the United Nations. The standards in this case are referred to as the "UN/EDIFACT" standards (for United Nations EDI for the Administration of Commerce and Transport). Given current business trends, it appears likely that over the next decade or so the use of ANSI X12 in the United States will give way to EDIFACT.

While they are not identical, ANSI and EDIFACT standards are structurally parallel, each consisting of four interrelated groups of standards: the data element dictionaries and tables, the segment directory, the transaction set standards, and the transmission control standards. Very generally:

- The data element dictionaries define the data elements that can be transmitted and provide standard codes for them; tables provide the range of standards values for certain of the data elements;
- The segment directory defines the syntax for allowable combinations of data elements—segments often corresponding to a single line on a hardcopy document;
- The transaction set standards define electronic documents—such as invoices and purchase orders—in terms of the allowable sequences of segments out of which they may be formed; and
- The transmission control standards provide the "envelope" for the electronic documents—defining such things as how the transaction sets are identified, how they may be grouped, how the sender and receiver are identified, how beginnings and ends of documents are marked, and providing procedures for starting transmission and acknowledging receipt.

Both within ANSI and EDIFACT, these four groups of standards serve primarily to set a uniform format for the content of messages. For the most part, they are equally applicable to messages

sent in a magnetic medium—such as floppy disk or 9-track tape—or transmitted via telecommunications. Moreover, by design, the standards are compatible with a very broad range of hardware/software configurations housing the senders' and recipients' databases—in environments that range from mainframe to personal computer.

Both the ANSI and EDIFACT standards are supported by an extensive array of commercially available software products that automate the process of translating between these standard formats and the particular structure of a sender's or recipient's database. Some of these products also automate the process of transmission, sometimes in conjunction with the services of a commercial network or electronic mail service. In addition, the increasing private and public sector use of the X12 standards has generated a body of accepted practices to deal with confidential business information (CBI), signature/certification, data security, and other issues raised by electronic reporting.

At least within the ANSI framework, standards now exist for a broad range of transaction sets, and includes the material safety data sheet (MSDS). The segment and data element standards are correspondingly broad; moreover, they are readily amended to cover additional data. It is especially easy to add new data element values; indeed, a number of industries maintain their own data element tables, which they can amend without prior ANSI approval.

Given these features, it is likely the ANSI framework—and increasingly the EDIFACT framework as well—will accommodate virtually all of the reporting to which this policy statement applies. Even as they stand, the ANSI data dictionaries and segment directories include a rich vocabulary and syntax for such tasks as identifying facilities, describing chemical properties and characterizing hazards, and the existing transaction sets will accommodate many if not all of EPA's standard reports. In addition, the transmission standards—to the extent that they are applicable—can probably be used without modification. The ANSI and EDIFACT frameworks, therefore, appear to offer the Agency a ready-made and widely accepted approach (or approaches) to electronic reporting. To take this approach in a particular case would largely be a matter of specifying how the particular EPA report was to be translated into existing ANSI or EDIFACT segments and data elements—as necessary, adding data elements/

values and segments conforming to ANSI/EDIFACT syntax.

This approach offers many advantages. Most obviously, it should minimize the cost and burdens of electronic reporting for the regulated community, since it would largely accommodate their existing EDI capabilities. Comments received in response to the *Federal Register* notice, "Formation of an Agency Workgroup to Consider Uniform Standards for the Electronic Reporting of Data", make this clear. 54 FR 15251 (April 17, 1989). Equally important, it should help minimize costs for EPA, providing much of the specification for electronic reports ready-made, and allowing programs to avail themselves of relatively inexpensive, commercially available EDI translation software in lieu of custom programming. In addition, it should put the Agency in better position to meet future needs for electronic dissemination of EPA information products, and give Agency programs easier access to each other's data. These considerations motivate many of the provisions of this policy.

E. General Policy on Electronic Reporting

1. Offering the Option of Electronic Reporting

EPA programs should strive to the extent practicable to offer their regulated communities the option of submitting reports electronically wherever it is reasonable to expect that this will:

- Reduce the costs and/or burdens of reporting for a significant segment of the regulated community, or
- Reduce the overall costs and/or increase the overall benefits of this reporting for the program.

2. Keeping Electronic Reporting Optional

While the cost/benefit ratio for electronic reporting generally improves as the number of participants increases, programs must do nothing to coerce members of their regulated communities into reporting electronically. Where offering the option of electronic reporting, programs must always allow paper submissions as an alternative.

F. Policy on the Approach to Electronic Reporting

1. Conforming to Established National or International Frameworks for Electronic Data Interchange (EDI)

Except in the cases described under paragraph F.3, programs implementing electronic reporting should do so within one or both of the two frameworks

provided by the ANSI X12 and UN/EDIFACT standards. Within the ANSI X12 or UN/EDIFACT frameworks, programs should ensure that:

- The format specifications they set for the electronic submission of particular reports conform—to the extent practicable—to existing data dictionaries and value tables, and to existing segment and transaction set structures;
- The submission procedures they set conform to existing transmission control standards to the extent that such standards apply;
- Any data elements or values, or segments or transaction sets that their implementations add to existing standards are—to the extent practicable—compatible with the syntax of the framework.

2. Considering Electronic Reporting Within the EDIFACT Framework

Programs implementing electronic reporting should consider the possibility that EDI participants in their regulated communities may—or may soon—be migrating from ANSI X12 to the UN/EDIFACT framework. A program should adopt whichever framework they reasonably expect will predominate in their regulated community within the relatively near term. Programs may also wish to weigh the relative costs and benefits of implementing electronic reporting within both ANSI and EDIFACT—in effect maintaining a "bilingual" electronic reporting system.

3. Cases Outside the ANSI and EDIFACT Frameworks

This policy recognizes that there are cases where the practices or capabilities that predominate in a regulated community—or other factors, such as the unique or nonrecurring nature of the data collection—indicate that electronic reporting outside the ANSI and EDIFACT framework is or will be the most cost-effective approach for all parties concerned. In such cases, this policy encourages programs to implement electronic reporting in a manner that best fits the special circumstances at hand—whether or not the implementation conforms to ANSI or EDIFACT standards. Programs that take such an approach, however, should ensure that:

- Their implementation is compatible with the electronic reporting practices or capabilities that predominate in their regulated community, at least for the kind of data being transferred; and
- In any case, their approach does not involve more expense or burden than

would implementation within ANSI or EDIFACT.

G. Policy on Hardware/Software Options for Electronic Reporting

1. Ensuring Compatibility With the Broadest Possible Range of Sender Hardware/Software

Regardless of the approach taken, programs should minimize the need for members of the regulated community wishing to report electronically to reconfigure their systems.

2. Allowing for a Broad Range of Electronic/Magnetic Media

In the interest of allowing the widest participation in electronic reporting, programs should not arbitrarily restrict the acceptable media for electronic reporting. However, programs may legitimately impose such restrictions where accepting certain media would involve unacceptable costs or administrative burdens for the Agency.

H. Taking Account of the Needs of State/Local Government Recipients of Data

This policy will apply in many cases where the recipients of data from the regulated community will include State and local government agencies. In these cases, programs should:

- Include the effects on State and local government agencies in considering the costs and the benefits of adopting electronic reporting, and
- Refrain from taking any approach to electronic reporting that will impose unacceptable costs on State or local government agencies.

I. Coordinating the Implementation of Electronic Reporting

1. Establishing an Agency Coordinating Committee for the Implementation of Electronic Reporting

When this policy becomes effective, the Electronic Reporting Standards workgroup will be reconstituted as a Coordinating Committee for the Implementation of Electronic Reporting.

2. Setting Format Specifications for Agency Reports

To the extent practicable, programs should consult with the Coordinating Committee as they set format specifications for Agency reports, to ensure that segments and data elements and values used by more than one program are represented uniformly—within the ANSI or EDIFACT frameworks—across the Agency.

3. Obtaining the Hardware and Software to Support Electronic Reporting

To the extent practicable, programs should consult with the Coordinating Committee as they obtain the hardware, software and related services that they will use to conduct their ANSI- or EDIFACT-based electronic transactions—so that they make the most of opportunities to share resources.

4. Liaison With EDI Standards Committees

The Coordinating Committee will serve as the Agency liaison for electronic reporting with other Federal agencies and with the standards committees sponsored by the ANSI and EDIFACT organizations. Where programs amend ANSI or EDIFACT standards in the course of setting specifications for particular Agency reports, they should inform the relevant standards committees of their activities by communicating through the Coordinating Committee. On a case-by-case basis, the Coordinating Committee may decide to seek formal ANSI or EDIFACT recognition for Agency amendments. However, the adoption and use of particular reporting standards are under the control of the Agency, and are not dependent upon formal ANSI or EDIFACT recognition.

J. Responsibilities for Implementation

The Office of Policy, Planning and Evaluation (OPPE), the Office of Information Resources Management (OIRM), and the programs will share the

responsibilities for implementing electronic reporting under this policy, with the advice of the Coordinating Committee established under paragraph I.1. Specifically:

- OPPE will convene and chair the Coordinating Committee, will ensure that this policy receives appropriate consideration in regulation development through the Agency Steering Committee process, and will foster compliance with this policy through the Paperwork Reduction Act clearance process;
- OIRM will provide the Coordinating Committee with technical leadership—particularly in addressing issues of systems coordination—will provide technical support to programs as they implement electronic reporting, and will foster compliance with this policy through their various information resource management program authorities;
- The programs will incorporate electronic reporting considerations into their information collection and system life cycle planning processes, with review by their senior information resources management officials (SIRMOs). The programs will develop the specifications and procedures for the electronic submission of particular Agency reports—to meet their individual information needs—in compliance with the relevant provisions of this policy. The programs will also be responsible for developing whatever procedures they need to assure CBI, data security, and privacy, or to deal with other concerns. They will be responsible for communicating these specifications and procedures to their regulated communities and to affected States and local governments.

Dated: July 20, 1990.

Dan Beurdsley,
Acting Assistant Administrator.

[FR Doc. 90-17692 Filed 7-27-90; 8:45 am]

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S. 933/Pub. L. 101-336

Americans with Disabilities Act of 1990. (July 26, 1990; 104 Stat. 327; 52 pages) Price: \$1.50

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